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IN THE

SUPREME COURT OF THE UNITED STATES

.....TERM, A. D. 1917.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents,

BRIEF OF RESPONDENT ON PETITION FOR WRIT OF CERTIORARI.

FRANK C. SMITH,
Attorney for Respondents.

Press-Record Publishing Co.

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT:

We do not believe this to be a case for review by the Supreme Court. As has been said "The Supreme Court may extend Certiorari to every case pending in the U. S. Circuit Court of Appeals * * * but this power will be sparingly exercised and is only properly invoked where questions of gravity and importance are involved."

In re Woods, Petitioner, 143 U. S. 202.
Lau Ow Bew vs. U. S., 144 U. S. 47 - 55.
Forsyth vs. Hammond, 166 U. S. 506 - 14.
Lau Ow Bew, Petitioner, 141 U. S. 583.
The New York, 175 U. S. 187.

STATEMENT.

The statement of Petitioner as it appears on page 8 is, **in part,** a correct statement of the facts. According to the evidence, Cook, one of the employees did not know there had been a reduction of wages at the plant until he received his first pay (Ab. 70). Churchill quit when the strike was called (Ab. 66). It was not to remonstrate with the American Steel Foundries people that Earl Galloway, the President of the Tri-City Central Trades Council, called at the Mill about the 20th day of April, 1914.

The men in the employ of the Mill, who were members of Unions having representation in the Tri-City Central Trades Council, had filed complaint with the Central Trades Council, because their wages had been reduced, and at their request a Committee was appointed to confer with the Managament (Ab. 54). Galloway, by virtue of being President, was made Chairman of the Committee and he was the only one the Company would admit to the Plant (Ab. 55). The Superintendent found fault because none of the Committee were employees that particular day. But Galloway informed him that some of the Committee had been and were members of the different locals (Ab. 55).

Mr. Walcher, the Superintendent, informed Galloway that he would not meet with any representative of organized labor (Ab. 55); that if anybody around that plant had a grievance to come as individuals (Ab. 55). Just how many employees were members of Unions represented in the Trades Council we do not know, but Walcher, the Superintendent, testified that probably 80 or 90 per cent (Ab. 51). "We positively did not propose to recognize any of these Labor Unions. I told him, Galloway, we had nothing to arbitrate (Ab. 52). We run an open shop; don't recognize organized labor, merely deal with our employees (Ab. 32). I refused to deal with Galloway because he was representing a labor organization" (Ab. 32). Just how many employees were out owing to the reduction of wages we can only approximate. The Superintendent testified that when running full force there were about 1600 men, but at the time of the strike, probably about 300 (Ab. 26). When the Granite City Commercial Club endeavored to bring about a settlement and a Committee from the Central Trades met with representatives of such Club, the City officials and representatives of said Mill (Ab. 55), Walcher, the Superintendent, said: "We have no arbitration offer to make to these laboring men" (Ab. 52). After Galloway reported the result of such interview to the Tri-City Central Trades Council a strike was ordered and while assaults may have been committed, as to whether such assaults were committed " by strikers" or "strike breakers" or "outside parties" there is a conflict in the evidence.

The reason Mayor Kirkpatrick, of Granite City, did not furnish police is because he did not think it necessary (Ab. 59)

and for like reason no deputy sheriffs were furnished by Sheriff Henry (Ab. 61). At the joint conference held at the instance of the Commercial Club, Galloway said to Davis, the President of the Mill Company: "One of your men tried to shoot one of our boys last night" (Ab. 56), and Mr. Davis replied: "The only trouble with that fellow was his aim was not good enough" (Ab. 56). The Mayor overheard this (Ab. 58). Hence, it may be possible that the Mill people were seeking to bring on a conflict between their strike-breakers and the pickets to give them an excuse to go into Court and ask for an injunction. No one connected with the Trades Council, nor did any of the defendants threaten the destruction of property. Walcher, the Superintendent, testified that he heard it, but as to who said it, or from whom he heard it, he had no recollection (Ab. 30). No other person made such charge.

That part of the statement which says that the Tri-City Central Trades Council was "a meddler" (P. 12) is erroneous.

Galloway, the President of the Tri-City Central Trades Council testified: "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary of such Trades Council testified: "A communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to

have the wages restored. * * * Ten or eleven trades were represented at the meeting on the 19th. I was not at the meeting on the 20th when the committee reported" (Ab. 72).

Just how many employees of the Foundries were members of Locals represented in such Central Trades Council is not stated unless we take the testimony of Walcher, Superintendent of the plant, who said he thought about 80 or 90 per cent (Ab. 51). The ruling of the U. S. Circuit Court of Appeals in reversing the cause and directing the Court below to modify the decree, says: "In so far as the decree restrains all picketing and all persuasion and all interference with the Plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein" (Ab. 114).

The Complaint of the defendants in this case is based on the ground that the District Judge held it to be unlawful for wage earners to combine **without regard to lawless acts.** The learned Judge said: "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). The defendants took exception to such holding and appealed. The District Judge held furthermore that "There is no such thing as peaceable picketing" (Ab. 80). To this holding also the defendants dissented. Upon both propositions the defendants were sustained by the U. S. Circuit Court of Appeals. Nor was the ruling of such Court of Appeals by a divided Court.

BRIEF AND ARGUMENT.

We shall take up the points in the order, as they appear, in Petitioner's Brief on Pages 5, 6 and 7.

I.

The contention of petitioner to the effect, "that upon the undisputed evidence in the record * * * the Circuit Court of Appeals erroneously reversed the decree of the District Court." is without merit, for the reason. The District Judge predicated his opinion upon what constituted "an **unlawful combination.**" "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purpose of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). As far as the combination itself is concerned there was no dispute, but the Tri-City Central Trades Council, and other defendants, contend that such a combination was not unlawful. The trial Judge in his opinion, on page 80, said: "There is no such thing as peaceful picketing." The contention of the Tri-City Central Trades Council is that there is such a thing as "peaceful picketing" and the evidence on this point is conclusive. On

page 81 the District Judge said: "The injunction may go this much further, it may prohibit absolutely picketing for the purpose of executing this unlawful purpose."

It was upon these two questions, as to what constitutes an **unlawful combination,** and the right to do **peaceable picketing,** that Complainant and the Defendant disagreed and the issue upon these two questions was squarely joined.

When the plant resumed operations they reduced the scale of wages from two to nine cents per hour. Because of this fact a controversy arose between employer and employees. The Tri-City Central Trades Council, while composed of representatives of 37 Labor Unions of Granite City, Madison and Venice, maintained it was not an unlawful combination. According to the testimony of **Galloway,** the President, its object was "to better the conditions of the working classes" (Ab. 54). "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike. * * * We tried to carry out that section (Ab. 54). The Central Trades Council is not a secret organization. Its meetings are open, its minutes are printed and promulgated and sent to all affiliated bodies" (Ab. 55).

Cavanagh, the Secretary, testified that "The object of the Council is to bring the laboring class into closer affiliation and secure better working conditions and wages for the workingmen" (Ab. 72).

The major portion of the employes of the American Steel Foundries were members of the various Locals which comprise

the Central Trades Council. Just what number it does not appear, but Walcher, the Superintendent of the Mill, testified: "We only had called for in round numbers, three hundred men and laid off approximately thirteen hundred. Eighty or ninety percent of the employees were old men. I assume these men were members of the various organizations" (Ab. 51). Galloway, the President, testified: "After the Council received complaints about the reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary, testified that "At a regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages restored. The meeting was called for Sunday, the 19th, and ten or eleven trades were represented (Ab. 72). We had complaints from the men who worked at the Foundry (Ab. 72). Our organization is not secret. Our meetings are not secret" (Ab. 72).

Why the District Judge should hold such a combination to be unlawful is beyond our comprehension.

"Conspiracy" has been defined to be a combination between two or more persons to do a criminal or an unlawful act,

or a lawful act, by criminal or unlawful means," Cyc. Vol. 8, P. 620.

In the case at bar Complainant failed to prove a "conspiracy." Nevertheless the District Judge held it to be a "conspiracy" for workingmen to combine and demand the restoration of a former scale of wages (Ab. 78).

While the District Judge did hold that it was unlawful for wage earners to combine to compel the employer to pay a certain scale of wages, the U. S. Circuit Court of Appeals, on appeal, said: "From the record here we can reach no other concluson than that the object of this strike was to secure for Plaintiff's employees the November wage scale of the Union. Nothing appears in the record to indicate that this was not in good faith" (Ab. 112). The Court held furthermore, "In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed" (Ab. 112).

II.

As to the charge of conspiracy or unlawful combination there was not one scintilla of evidence. Quite true it was alleged in the bill but there was no proof. When Galloway, the President of the Tri-City Central Trades Council, testified, Counsel for Petitioner on Cross Examination sought to have him admit as much, but all he said was, "Our purpose in sending the pickets down there was not exactly to enforce an increase of wages but to try to encourage working men to quit work so the American Steel Foundries would be compelled to raise the wages to the standard" Ab. 57). "The pickets were not authorized to commit any unlawful acts, that is not the way the Council carries on its business" (Ab. 57).

Cavanagh, Secretary of the Central Trades Council, testified: "The object of the Central Trades council is to bring the laboring classes into closer affiliation and secure better working conditions and wages for the workingmen. No one connected with the Council authorized any unlawful act" (Ab. 72). **Wade,** Treasurer of the Central Body, testified: "We didn't authorize any unlawful or wrongful act" (Ab. 73).

The U. S. Circuit Court of Appeals, Fourth Circuit, in a recent case said:

"A combination to organize employees in a certain business to secure higher wages by peaceable and lawful methods does not constitute a conspiracy."

Mitchell v. Hitchman Coal & Coke Co. 214 Fed. 685.
(Decided 1914.)
(Opinion District Judge, 202 Fed. 512, reversed.)

Nor was the "threats of an organizer to organize the employees of Complainant's mine or shut it down, sufficient to show a conspiracy."
214 Fed. 685.

Notwithstanding the District Court held otherwise, "Evidence on review held insufficient to establish a conspiracy on the part of the officers and representatives of Labor Unions to organize the employees of Complainant's mine by unlawful means" (Id).

In a very recent case it was held, "Laborers may combine, forming unions to protect their rights and they have a right to persuade Complainant's employees to leave its service * * * they may picket their employer's business."

Alaska S. S. Co. v. International Long Shoremen's Assn. of Puget Sound. 230 Fed 964. (Decided 1916.)

On page 969 appears an opinion which was written by Justice Holmes while sitting on the Supreme Bench of Mass. (167 Mass. 92).

"If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible returns, it must be true, when combined, they have the same liberty that combined capital has to * * * bestowal or refusal of these advantages which they otherwise lawfully control" (P. 969).

On Volume 8 of Cye. on page 637 we find the following:

"In the earlier decisions, it was held that while persons may each singly refuse to work unless they receive an advance in wages, yet if they do so by preconcert, or association, they may be punished as for a conspiracy * * *.

The more recent English decisions, influenced doubtless by legislation on the subject, hold that workmen have a right while perfectly free of enjoyment to agree among themselves not to go in to any employment unless they can get a certain rate of wages. * * *

The doctrine of these later decisions is also recognized in America. Workmen may lawfully combine to obtain as much wages as they may after consideration agree to insist upon receiving for their work."

III.

Among other cases cited is Wabash R. R. vs. Hannihan, 121 Fed. 563.

In Nation Fire etc. v. Mason Builders Assn., 169 Fed. 259, the U. S. Circuit Court of Appeals, Second Circuit, wherein a charge of combination between Mason Builders Assn. and Bricklayers Union was alleged; on Page 265 the Court said: "The direct object or purpose of a combination furnishes the proving test of its legality. It is not every injury inflicted upon third persons in its operation that renders a combination unlawful." * * *

"An agreement providing that no member of the Bricklayers' Union should work for any contractor who did not comply with the rules. Held, although such an agreement operated to complainants' prejudice, it was not a conspiracy against which complainant had any remedy" (P. 261).

And, in the case at bar, even though an agreement had been made whereby the Mill Company was to, if possible, by lawful means make it impossible to operate the Mill unless such Mill Company agree to an increase of wages, or submit the matter to arbitration, it cannot be said that the wage earners had exceeded their rights.

An unlawful conspiracy is defined to be "A combination between two or more persons to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means."

Goldfield Con. Mines Co. vs. Miners' Union, 159 Fed. 500. On Page 519 the Court said: "When free from contract obligations workmen have a legal right, singly, collectively or as a Union to strike; and having this right they have the further right to use such lawful means to make the strike effective as are not in conflict with the rights of others."

In the case of Bettner v. West Va., etc. Coal Co., 214 Fed. 716 the U. S. Circuit Court of Appeals for the Fourth Circuit (1914) held: "Strikers may not be restrained from using persuasion and other peaceable methods."

In the case of L. W. & W. R. R. v. Switchmen's Union, 158 Fed. 541, where an injunction was sought to restrain Switchmen from violating a contract by striking, the Court said: "I am inclined to think that defendants had the right to select a Committee to request a conference * * * and they could, if they chose to do so, delegate an officer of the Switchmen's Union to represent them and to advocate an adjustment of differences" (P. 545). And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council.

In the case of Kelly v. Robinson, 187 Fed. 415, the U. S. Circuit Court of Appeals for the Eighth Circuit decided: "Union or other laborers have the right to quit the service * * * and they may by peaceable means persuade others to quit the service" (P. 417).

The U. S. Circuit Court of Appeals, Seventh Circuit, in the case of Arthur v. Oakes et al, 63 Fed. 310-27, wherein a District Judge had issued an injunction restraining engineers, conductors and switchmen from in any manner interfering with the operation of the road" * * *. On appeal, Justice Harlan said: "The Court below should have eliminated from the writ of injunction the words: 'And from so quitting the service of said receiver with, or without, notice, as to cripple the property or prevent or hinder the operation of said railroad' (P. 319). "The exercise

of employees of their right to quit in consequence of a reduction of wages could not be made to depend upon consideration of hardships or inconvenience to others" (P. 319).

And, in the case at bar, the Mill Company may not complain because the operation of the Mill is interfered with, for the reason the Company had the alternative, to either restore the former scale of wages, or arbitrate. They declined the proffer. The act of the Tri-City Central Trades Council was therefore a lawful act and as the Court of Appeals has said on Page 89, "Nothing appears in the record to indicate that this was not in good faith, or to raise a suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the Plaintiff's conduct of its business, or to injure and destroy its business and property."

In the Hitchman Coal Co. v. Mitchell, 202 Fed. 512, the District Judge held that "The United Mine Workers of America was an unlawful conspiracy to injure the business of mine operators." But on appeal to the U. S. Circuit Court of Appeals for the Fourth Circuit (214 Fed. 685) the Court said: "He who seeks equity must do equity." "In other words he must come into Court with clean hands. If the Courts of this Country should by injunction relief protect the mine owner in the enjoyment of his property rights and restrain the laboring people from organizing their forces, by deciding such organization unlawful, would not the employer be in position to dictate the terms, or wages, of employees." * * *

"It should be definitely understood that the laboring men

have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living" (Page 715). "For reasons set forth the decree of the Court below is reversed * * * at Plaintiff's cost" (P. 716).

And why was such Miners' Union held to be an unlawful combination by such District Judge? Because the trial Judge held, "in pursuit of its unlawful purposes to secure control of the monoply of mine labor" (P. 556). And what was this unlawful purpose? Nothing whatever, except the Miners' Union sought to make it obligatory that the Union be recognized. And in the case at bar all the Central Trades Council demanded was the restoration of the former scale of wages, or arbitration (Ab. 55).

"Notwithstanding, the Code of West Virginia provides that no persons, or combination of persons, by force, threats, menaces, or intimidation of any kind shall prevent or attempt to prevent from working in or about any mine any person or persons who have a lawful right to work about the same and who desire to so work. It was held that the Trade Union known as the United Mine Workers of America organized to secure reasonable wages and better working conditions among the mine workers of the United States by concerted effort to compel by peaceable means the improvement of mining conditions is not an unlawful organization, or combination, either under the statute, or at common law."

Mitchell vs. Hitchmann, etc., 214 Fed. 685.

On Page 696 the Court of appeals said:

"The learned trial Judge insists that the common law under which labor organizations have been declared unlawful in England is still in force in West Virginia and that therefore the Miners' Union is unlawful. * * * While there are decisions at Common law by the Court of England in support of such theory, yet such rule has not prevailed in this country except in a few of the earlier decisions of our Courts. Even in England combinations of this character were only proceeded against, as a general rule, where they were criminal or prohibited by statutory law." Id.

"The growth of development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little if any concert of action on the part of the laboring people owing to their helpless condition, due in main to their ignorance. Their domination by the land owner and the capitalist was absolute. * * * Under such circumstances they were as helpless almost as slaves, and, is it any wonder, that we have so many decisions at common law * * * as well as the enactment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish, by organized effort, those things necessary to elevate them to a place where they could assert those rights so essential to their welfare. The industrial development of the world within the last half century has been such as to render it necessary for the Courts to take a broader and more comprehensive view than formerly of matters pertaining to the relation of capital and labor." (P. 698) Id.

"It is now recognized by all civilized countries that labor is the basis of all wealth, and without which it is utterly impossible to accomplish anything in the industrial world" (P. 699).

"In this instance the Plaintiff has adopted a policy by which only non-union men be employed. If plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment * * * by what process of reasoning can it be held that the defendant may not adopt the same method in order to protect their interests." (P. 703.) Id.

"Surely we have not reached the point where capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law where they are attempting to assert their rights." (P. 704.) Id.

We have not attempted to defend lawlessness, if there was any, but we have contended for the right to do peaceable picketing. On this point we are willing that all of the Defendant's testimony and all of Complainant's witnesses be disregarded **except the officials of Complainant Steel Foundries**:

Hall, the Master Mechanic, testified: I never saw any acts of violence, nor any of the assaults. I only saw them stop the men and try to induce them to quit work" (Ab. 50).

Walcher, the Superintendent, testified. "I saw none of the men assaulted. They were trying to prevail upon the men from entering the plant (Ab. 31). I got to the plant about 6:30 A. M., go in and out at noon and stayed there until the plant

closed down for the night; saw no assaults committed; I saw no disturbance" (Ab. 31).

Floyd, the Chief Employment Agent, who was stationed at the main gate, testified: "I am at this gate from 7 A. M. until 8, 9 or 10 P. M. I didn't see any of the particular attacks that are mentioned. All I saw was the pickets talking to the men and the men being stopped" (Ab. 43).

Hoffman, Assistant Foreman, testified: "I have seen pickets about the Wabash depot, 150 yards from the plant (Ab. 45). The nearest I saw the pickets was 100 feet from the plant (Ab. 45). I saw no assaults. All I saw them do was to talk to the men" (Ab. 45).

Because Alderman Burton passed by the Mill every morning and evening to and from his work at the Laclede plant in Madison he was made a defendant in this case. He absolved himself, however, at the hearing. He testified that he "was not a member of any labor union. Passed by every morning and evening. I saw no disturbance there whatever and I passed there every day for three weeks" (Ab. 71).

We submit that if these five men are to be believed then there was peaceable picketing. It is not often we admit that one side can establish a proposition by simply quoting the testimony of adverse witnesses but we have done so in this case.

We do not believe that the statement charging the defendants with an intention of burning, or destroying the Mill, should have been made, in any event not without some evidence to substantiate such charge.

Walcher, the Superintendent, did say that "I was told that the statement had been made that the plant was going to be burnt" (Ab. 32). But when he was asked who told him or from whom he heard it, he could not say. This was nothing more nor less than "hearsay evidence" and should not have been given any credence by the trial Court. And why Mr. Davis, the President of the Steel Foundries, should say what he did to the President of the Central Trades Council, at the Commercial Club conference, we fail to understand. After Galloway had stated, "I said to Mr. Davis, some of the men they had imported in there as strike-breakers had shot at some of our men" (Ab. 56), Mr. Davis replied, "the only trouble with the man who done the shooting was that he didn't shoot straight enough" (Ab. 56). While Mr. Davis was present in Court when this statement was made, he did not go on the stand to make denial. Still it is not a pleasant matter to refer to, for up to the present controversy those connected with the Central Trades Council had had a high regard for Mr. Davis, and had not the charge been made that those connected with the Trades Council and other defendants contemplated burning down the Mill (Steel Mill) it would not have been alluded to.

Why counsel for Petitioner would contend that a Federal Court should follow the holding of a State Court is beyond our comprehension. They had their choice of forums. Had the bill been filed in the City Court of Granite City a defense could have been made at nominal expense. Or they could have filed the bill in the Circuit Court of Madison County and defendants

would have to go 15 miles only, to Edwardsville, the County Seat. But they chose to file in the U. S. District Court at Springfield, thus necessitating that defendants go 100 miles. If the American Steel Foundries wished to invoke the Criminal Code of the State of Illinois (Petition P. 25), with reference to a conspiracy the State Courts were open. The "Barnes case" (232 Ill. 425), cited on page 26, tends to uphold the view that wage earners have not the right to combine to compel an employer to pay a certain scale of wages and would indicate that wage earners have not the right to do peaceable picketing. But such holding was by a divided Court and we submit that the dissenting opinion (P. 411), written by Justice Farmer, concurred in by Justice Scott, is more in accordance with justice and the spirit of the times. However, as the said U. S. Court of Appeals had already passed on the two questions involved in the Allis-Chalmers case, 166 Fed. 45, there was nothing for the Court to do but follow its own ruling.

IV.

Duplication of III.

V.

We cannot understand why the statement should be made that "The Circuit Court of Appeals erroneously based its decision upon the authority of Iron Molders' Union v. Allis-Chalmers Company, 166 Fed. Rep. 45.

If there is any one person who should fully comprehend the meaning of a decision it should be the Judge, or Judges, who

comprise such Court. And the allegation that such Court "misapprehended the purport and applicability of the opinion in that case" is tantamount to saying that the Court did not give the matter careful consideration. And yet not only were written briefs filed, but the case was twice orally argued. Furthermore a petition for a rehearing was filed. Hence the statement that the decision was "erroneously based" is without merit.

VI.

The allegation that "this case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with its business" is erroneous.

Under heading IV, on page 54, we find that the Tri-City Central Trades Council is alluded to as "a meddler." And on page 55 referred to as "an interloper." That "it was indulging in a gratuitous interference between the petitioner and its employees. In view of the evidence adduced we fail to see why such a statement should be made. The Record shows that the Tri-City Central Trades Council is composed of 37 local organizations, each of which has a representation of six members. The purpose of which organization is to "settle all disputes between employer and employee in relation to wages, etc., by arbitration instead of strike" (Ab. 54). "If we cannot settle by arbitration then we strike" (Ab. 57).

Galloway, the President, testified: "As President of the Central Trades I first learned of a controversy between wage earners and the Foundries from the various delegates of the

various trades who were refused any wages at that plant and made complaint to the Central Body that their wages were reduced from two to nine cents on the hour" (Ab. 54).

"After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its cooperation" (Ab. 55).

Cavanagh, Secretary of the Central Trades, testified: "At the regular meeting on April 15th a communication was received from the Machinists Union requesting that a special meeting be called of all the trades working at the American Steel Foundries to arrange some plan to have the wages restored that were in force when the plant shut down and the meeting was called for Sunday, April 19th. Ten or eleven trades were represented" (Ab. 72).

The Superintendent of the Mill, Walcher, testified that "Eighty or ninety per cent of the employees were old men. I presume these men were members of the various organizations" (Ab. 51).

With this undisputed testimony appearing in the Record we are at a loss to understand why Counsel for Petitioner would say that the Tri-City Central Trades Council is "a meddler" or "an interloper," for it was only performing the function for which it was created.

In the case of Mitchell v. Hitchman Coal Co., 214 Fed. 685-93 (decided 1914, U. S. Court of Appeals, Fourth Circuit), a

coal mine had closed down in June and suspended operations 50 days, and resumed operation upon a new mine basis employing only non-union men. The claim was made in that case that the strikers were not employees and that the Miners' Union of America was a meddler. And while the District Court ruled against the Miners' Union, on appeal the the trial Court was reversed.

In addition to the statement of Walcher that approximately 80 or 90 per cent of the employees were represented in the Trades Council (Ab. 51), Cook testified that he quit because of the reduction of wages (Ab. 70). "I didn't know what wages I was going to get when the plant started up; found it out in three weeks" (Ab. 70).

Churchill, a member of the Machinists' Union, testified that he quit because of the reduction of wages (Ab. 65). Lamb testified that when the strike came on four or five of the members were working at the plant (Ab. 60).

To warrant this Court in granting Certiorari there should be a showing made of **importance and gravity.** Instead, however, of making such showing it would appear instead that the application is made for delay. To find Court decisions appertaining to this heading cited by Petitioner it is necessary that a search be made through such petition.

The first case cited is the Keegan case, 150 Fed, 148 (P. 32) and a distinction is sought to be made because in that case it appears the strikers were in the employ of the defendant while in the case at bar the strikers were represented by the Tri-City

Central Trades Council. Likewise in the Everett case, 150 Va. 188, and the same point is made in Jones v. Maher, 166 N. Y. Supp. 180, where the men struck because the foreman was discharged (P. 34).

The Gray case, 91 Minn. 171, is on page 34 referred to, alleging that it was a controversy between employee and employer. And again on page 34 the Heffron case, 139 Mo. 639, and the Jones case, 131 Ga. 356, are cited for like reason. But we fail to see that these cases form any basis why a writ of Certiorari should be granted.

On Page 35 Counsel makes the broad statement to the effect "Iron Molders' Union v. Allis Chalmers Company supra not being authority nor justification for the decision of the Circuit Court of Appeals, that the "Barnes decision" of the Illinois State Supreme Court "should have been followed." Strange indeed to expect that a United States Circuit Court of Appeals should disregard its own holding and follow a State Court decision. And this, too, when the State Court was divided on the proposition of law involved (Barnes case, 232 Ill. 425). Furthermore, the State Court, in a later case, Kemp v. Division No. 241, 255 Ill. 213, held that it was **not a conspiracy** because men formed a union and agreed not to work with non-union men. "That the purpose of organizing labor unions was to gain strength and that the officials of the labor unions were merely the agent of those affected" (P. 220).

The United States Supreme Court holding (107 U. S. 21), cited on page 35 has no reference to lawful or unlawful com-

bination of labor, nor of peaceable picketing. The Court in that case does say, "that ordinarily the United States Court will follow a State Court holding as to **real estate** and the construction of **State Constitutions** or **Statutes.**" But there is no question of real estate title involved; nor is the construction, which is to be placed upon a statute, or any particular section of the State Constitution, at issue. **Not once** has any reference been made to any State statute or section of the State Constitution, until the filing of this petition (page 35). As we have heretofore said, "Had Petitioner desired the application of the State law to the issues involved, they should have filed their bill for injunction in the State Court. They chose, however, to submit to the Federal Court and should not now complain.

On Page 51 we find the Gee case, 139 Fed. 582, cited, wherein a trial judge held that there was no such thing as peaceable picketing. But why cite such case and seek thus to overrule the U. S. Court of Appeals. The District Judge so held in the case at bar and the U. S. Court of Appeals has held otherwise. We find on page 52 the Beck case, 77 N. W. 13, and that portion quoted wherein the Court said: "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion." We do not, of course, know what the evidence showed in that case, but in the case at bar the evidence was conclusive that only peaceable picketing was authorized.

Why Counsel should cite the Gompers case, 221 U. S. 221, we cannot understand, for the reason the right to do peaceable picketing, or the right of wage earners to combine, and by law-

ful means to try and compel an employer to advance wages or submit the wage dispute to arbitration were not involved.

We hardly think the Court will consider the Jones case, 131 Ga. 336, cited on page 53, of sufficient moment to even give it much consideration.

The Sailors' Union case, 156 Fed. 450, cited on page 53, is not in point, and if it was it is only the opinion of a trial Judge. Whereas the U. S. Circuit Court of Appeals of the Seventh Circuit has twice gone on record as saying that wage earners may combine, and to enforce such combination may resort to peaceful picketing. Nor have we been referred to a U. S. Court of Appeals that has held to the contrary.

Whether it was upon this point Counsel cited the McKenna case, 30 Fed. Rep. 48 (See page 56 of Petition), we do not know, but the facts were not as they are in this case. The opinion says: "The defendants not being in Plaintiff's employ, and without any legal justification." In the case at bar there was justification, legal as well as otherwise, and the wage earners employed in such mill were represented by the Central Trades Council.

In the case of Hagerty, 116 Fed. 510, the complaint was based on the ground that the defendants were trespassing on the premises, the lands, of the Coal Company. In the case at bar not even one witness testified that there was trespassing.

On page 63 Counsel has cited the Cinti. Typo. Union case, 45 Fed. 135, wherein the question of boycotting a newspaper is

involved. While the controversy arose over unionizing the printers we fail to see any reference made to the right of wage earners to combine as they did in the case at bar under the head of the Central Trades Council. Nor does it appear the right of peaceful picketing was involved.

It would hardly be possible that this Court will pay much, if any, attention, to what a Judge in Connecticut said, but nevertheless the Glidden case, 8 Atl. Rep. 890 (decided in 1887), is, on page 64, referred to.

In that case it would seem a demand was made that the employes be discharged and others hired in their places, and the Court said this was wrongful dictation. But in the case at bar it was simply a question of wages. The Tri-City Central Trades Council did not demand that any employee be discharged.

On page 69 Counsel has cited the Frank case, 63 A. J. Eq. 443. In that case the Court held that "the right of a master to have a servant continue in his employ without molestation or enticement by any third party **is a property right.**"

Suffice to say in this connection that no employer has such thing as a property right in his employee. The Master had a property right in **his slave** prior to the issuing, by Lincoln, of the Emancipation Proclamaton, we concede. But at no time has the American wage earner conceded any such right to an employer.

This doctrine of Master and Servant is of antediluvian English origin and, as has been said in a recent case "The

Ancient English rule that labor unions were unlawful does not prevail in the United States in view of the changed conditions existing, the rule being now settled that labor may organize for its own protection and to further the interest of the laboring classes, and may strike and persuade and induce others to join them by peaceable means."

Mitchell v. Hitchman Coal Co. 214 Fed. 685 (Decided 1914). (Fourth Circuit.)

In the Kane case, 23 Fed. 748, it was held "that employees of a Receiver might abandon their employment and persuade others to do so, by peaceable and lawful means." And that is all the wage earners are contending for in the case at bar.

Why the Mayor of Granite City is referred to, on page 11, as being a member of the Socialist party can be but for one reason, to prejudice, if possible, the cause of the wage earners before the Honorable Court.

We have not understood Socialists to be law breakers. We heard "A Socialist" defined by the greatest living American, probably, as being "one who is endeavoring to improve conditions." Hence, if Kirkpatrick is doing that, instead of being a criminal he is a benefactor. Probably his sympathies were with the wage earners in their controversy with the Steel Foundries people, but that would not deter him from fulfilling his oath of office and to see that life and property were protected. When asked, with reference thereto, he testified: "I am ready to give police protection and did give it" (Ab. 58). "As Mayor of the city, I consider I have plenty of police to protect the

property; I have done that all along and would have done it without this injunction and am ready and willing to do it now" (Ab. 59).

Sheriff Henry testified: "I had two deputies down there and told them to investigate and they reported there was not much doing. If it was necessary we would have provided deputies" (Ab. 62). While a careful perusal of the evidence will show that in every instance where there was any assault or a mix-up of any kind between strike-breakers and others, it was a disputed question as to who was the aggressor. Be that as it may, we have not sought to make any defense of lawlessness. Those connected with the Tri-City Central Trades Council **did not authorize or countenance lawless acts.** and the Defendants testified positively that no unlawful act was committed by them, or either of them.

As to the statement made on page 11 to the effect that Galloway, the President of the Central Trades Council, was present when a riot took place, is erroneous. This mix-up took place on the 13th and at some distance from the plant. When Galloway was asked, with reference thereto, he said. "I was not at the plant or on the picket line on May the 13th, I worked until five o'clock in Madison, an adjoining town; got back to Granite City about 5:30 and then I was in Boyd's Garage until 6 o'clock. I did not strike any of the strike-breakers or other employees, leaving the plant, nor did I strike nor assault these parties on any other day other than the 13th" (Ab. 56).

The Debs case, 158 U. S. 564, has been quoted. The opinion in this case was predicated upon the theory that there was a boycott against interstate traffic and the handling of mails. In that case Justice Brewer, on page 577, said: "Employees may not be restrained from using persuasion and other peaceable methods, or from aiding strikers by furnishing money from a relief fund." All the wage earners desire in the case at bar is the right to combine and the right to do peaceable picketing.

The statement made on page 12 to the effect that, "after the restraining order was issued the plant was operated without interference," is probably true. After the Central Trades Council was held to be an "unlawful combination" (Ab. 78) and the District Judge had declared that "there is no such thing as peaceable picketing" (Ab. 80), the hundreds of wage earners represented by such Trades Council were shorn of every weapon. They accepted such decision of such trial Judge as the law and as good law abiding American citizens observed it. No doubt had the decision of such District Judge been adverse to such Steel Foundries, they would have disregarded the same "until such time as the Supreme Court might pass on the constitutionality of the question involved."

The Statute with reference to Conspiracy cited on page 25 has reference to where "persons conspire * * * with fraudulent or malicious intent, wrongfully and wickedly to injure the business or property of another * * *."

There is no evidence in the record that the officers of the Tri-City Central Trades Council, or other defendants, intended to perpetrate a fraud or by malicious intent wrongfully to destroy the business or property of Complainant.

In the case of People v. Young, 188 Ill. App. 208 (decided 1914), certain wage earners, members of the Carpenters' Union had, under this Statute, been indicted, because of a strike and alleged interference with others, and Counsel for the prosecution cited the Franklin Union case, 220 Ill. 355, but the Court of Appeals refused to follow such holding and on page 212 cited the Kemp case, 255 Ill. 213. On page 212 the Court said: "Union men or other employees have the right to seek by peaceable persuasion to induce others to leave or refrain from working for their employer."

While it would seem that the State Court did in the Franklin Union case, 220 Ill. 378 (decided 1906), hold against the right of organized labor to picket, such decision, it would appear was predicated on the theory that "Labor is property," and to interfere between employer and employee was to deprive a person of his property without due process of law (P. 378).

And in the Barnes case, 232 Ill. 424 (decided 1908). The Typographical Union made a demand for an eight-hour day and such union was held to be an unlawful combination (P. 432). But to this holding Justice Farmer dissented (P. 437) and the opinion written by him and concurred in by Justice Scott is more in accord with modern views with reference to

the rights of wage earners. When the question of the rights of labor unions to combine came for the third time before the State Supreme Court, Kemp v. Division No. 241, 255 Ill. 212 (decided 1912), the Court was not inclined to take such a drastic view of labor organizations; and on page 220 said: "Labor Unions have long since been recognized by the Courts of this Country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is, through combination, to advance the interests of the members by obtaining for them adequate compensation for their labor and it has been frequently stated by the American Courts that the fact that this purpose is sought to be obtained through combination, or concerted action of employees does not render the means unlawful. The purpose of organizing labor unions is to enable those employees who became members to negotiate matters arising between them and their employers through the intermediation of Officers and Committeemen of the Union and to accomplish their ends through concerted action" (P. 221).

"The demand that Appellees be discharged, and the threat that unless the Railway Company complied with the demand of the Union would call a strike of the employees of the Railway Company, in effect meant no more than the mere statement that the Union employes would no longer work with non-union employees, and if the Railroad Company chose to retain in its employ the non-union men the union employees would quit the service of the Company" (P. 222). "It has been comparatively

but a short time since it was unlawful for workmen to associate themselves together into such organizations as are now known as Trades Unions for the purpose of improving conditions of labor. Such organization was formerly held to be a criminal conspiracy" * * * (P. 224). "An agreement by a combination * * * to advance the interests of the Union and not having for its primary object the purpose of injuring others in their business or employment is lawful" (P. 224). "As to whether or not the object which this bill discloses was sought to be attained by the members of the Union was a lawful one * * * the authorities are clearly in conflict. * * *

"The precise question has never been passed upon in this State * * *. We are not inclined to follow the cases cited by Appellee (Street Car Company); we are of the opinion that the cases holding the contrary view (cited by the Street Ry. Employees' Union) are supported by the better reasoning" (P. 225).

"Without organization the Workmen would be utterly unable to make a successful effort to maintain or increase their wages or to enforce such demands as have been held proper" (P. 226).

"Appellees rely upon the Franklin Union case, 220 Ill. 355, and the Barnes case, 232 Ill., 424." In these cases the employees had gone out on strike and injunctions had been secured. * * * The injunctions had been violated. * * * While the matters involved in each case grew out of acts following a strike of

union employees, the question of the right to strike was not involved (P. 232). The case at bar partakes of none of the elements of a boycott. The primary object of a boycott being to inflict injury upon another has been held to be illegal. Here the primary object of the combination is to further the interests of the organization and improve the condition of its members. Whatever injury may follow to others is merely incidental" (P. 234-5). And is that not what the Tri-City Central Trades Council contemplated? The latest ruling of the State Supreme Court would indicate, therefore, that such Court does not hold it unlawful for wage earners to combine.

It has been said that any employer of labor, be he ever so well meaning, stands in the way of future progress if he insists upon dealing with his workmen "as individuals." Should such policy succeed, it would no doubt mean the degradation and impoverishment of the working classes. If organized, the wage earners may bargain collectively; this means concerted action and the right of wage earners to be represented. It is apparent that one not in the immediate employ of a person is in a better position to represent the employees. Such representative feels more independent for the reason he is not subject to dismissal. For an employer to insist upon treating with his employees "as individuals" would mean that each one of the thousands in a plant would have the "individual contract" and that would mean long hours, small pay, the sweat shop, etc;

while "collective bargaining" would mean improved conditions, better workmanship and more exalted citizenship.

We submit that it may not always be possible for the employerand employees to agree, but when, as in the case at bar, the cardinal principle of the Tri-City Central Trades Council sets forth specifically "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike" (Ab. 54). And, in this case had the Petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.

It is not uncommon for the employer to say that "peaceable picketing will interfere with my business." To not permit "peaceable picketing" the wage earner might retaliate by saying to the employer: "You are interfering with my right to live and enjoy the comforts of life."

Subsequent to the Civil War the wage earners of America have made marvelous strides. Wages have been increased, the work day shortened, the things he can buy, political privileges, legal rights, in skill, intelligence and the standing he has attained, the esteem in which he is held and the humane treatment which to him is accorded. But to obtain these, great sacrifices have been made by the pioneers of organ-

ized labor. Every advance of the wage earner has been through concerted action. Men interested in their fellow men have gone about the work of organization, devoting their time, without remuneration, to the cause. They dared to do this even when cognizant of the fact that they might be placed on the "black list," and not only they, but their loved ones as well be made to suffer for the necessaries of life. They made this sacrifice so that the conditions of the wage earners of America might be improved. **Not by means of violence,** for the one who would destroy life or property, or violate the law of the land, is a hindrance to the cause, but by insisting upon the right to organize, combine, and to enforce such combination by peaceable picketing, or other lawful means.

While Counsel for Petitioner has cited a number of Federal Court decisions they are all the opinion of a **District Judge** except two, viz: The Sailors' Union case, 156 Fed. 450 (Ninth Circuit), and the Allis Chalmers case, 166 Fed. 45 (Seventh Circuit). In the former it would appear that when a vessel was about to depart from a point on the California coast, employees were pinioned and imprisoned to keep them from going on the vessel. The Court, on page 453, said: "The purpose of the injunction was to prevent acts of lawlessness." Nothing of the kind occurred in the case at bar. The trial judge held it to be unlawful for the workingmen to combine (Ab. 78). And he held furthermore that there was no such thing as peaceful picketing (Ab. 80).

In the other case (Allis-Chalmers), the U. S. Circuit Court of Appeals held that workingmen did have the right to combine and did have the right to do peaceable picketing. Wherever these questions have arisen in other Circuits the holding of the U. S. Circuit Court of Appeals has been in conformity with the holding made by the Seventh Circuit in the Allis-Chalmers case.

Petitioner has not shown that the Supreme Court has decided the questions involved contrary to the ruling of the U. S. Circuit Court of Appeals. True, two Supreme Court decisions are cited: One the Burgess Case, 107 U. S. 20 (decided in 1882), but it does not allude to a combination of wage earners; nor of the right to do peaceable picketing. It appears that that case was cited: "because the U. S. Circuit Court of Appeals did not follow the holding of the State Supreme Court." And yet we have shown that the State Supreme Court itself in a later case (255 Ill. 213) would not follow the holding therein made. On Page 33 the U. S. Supreme Court said: "We do not consider ourselves bound to follow the decision of the State Court in this case. The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to that of the State Courts and are bound to exercise through our judgment as to the meaning and effect of these laws" (P. 33).

The other Supreme Court holding cited is the Gompers' case, 221 U. S. 418. That was a suit instituted originally under the Sherman Anti-Trust law, and the question involved was, as to

whether or not the defendants were guilty of a contempt of Court (P. 441). While the District Judge had adjudged Gompers et al guilty, the Supreme Court reversed such ruling (P. 452).

Hence, without even one decision of a U. S. Court of Appeals, or one holding of the U. S. Supreme Court, to sustain the contention of Complainant, to the effect **that working men have not the right to combine**, and have not the right to do **peaceable picketing**, the petitioner is not in position to seriously ask this Court to award Certiorari.

We have referred to every case cited by Counsel in support of their Application for Certiorari, scattered as they are throughout the petition, and regardless of any particular heading. Still we did it to ascertain, if possible, on what theory the attempt was being made to have this Court award Certiorari, but without avail, for, in our judgment, no showing has been made to warrant the Court in granting such Application.

We therefore respectfully submit that the Application for a Writ of Certiorari should be denied.

FRANK C. SMITH,
Attorney for Respondents.

Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

AMERICAN STEEL FOUNDRIES, Petitioner, vs. **THE TRI-CITY CENTRAL TRADES COUNCIL et al.,** Respondents.	On writ of Certiorari to the United States Circuit Court of Appeals for the Seventh District.

Brief and Argument for Petitioner

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Brief and Argument for Petitioner

STATEMENT OF THE CASE.

The American Steel Foundries is a corporation organized under the laws of the State of New Jersey and authorized to transact business in the State of Illinois. For many years it has operated a plant at Granite City, Illinois. The plat introduced in evidence (Printed Rec., 22) shows that its property is fenced and covers in the neighborhood of twenty acres of ground. Within the enclosure are some eight or nine buildings of various dimensions, the largest of these being of irregular dimensions about 650 by 412 feet. The next largest building is ap-

proximately 225 feet by 425 feet. These buildings cover substantially one-third of the premises, are of various construction, some combustible and some non-combustible. The frame work of the buildings is wood in a great many cases and one is an entire wood building. (Printed Rec., 25-26.)

In normal times the plant employs about 1,600 men. It was operated as an "open shop," employing both union and non-union labor without discrimination. In November, 1913, because of depressed condition of business the plant closed and all employees were laid off indefinitely. On April 1, 1914, the petitioner undertook a partial resumption of operations at this plant, and a few men were employed at the plant to get it in running order. Prior to April 6, 1914, notices were posted about the works inviting workmen at a reduced scale of wages, in some departments from two to nine cents per hour, and in a good half of the departments without any reduction, and on April 6th the plant opened on a twenty-five per cent basis of its rate of capacity, employing from 300 to 375 men. On the resumption of work, such men were hired as applied for employment at the reduced wage, and about eighty or ninety per cent of the employees were men who had been in the employ of the plant when it closed the preceding November. (Printed Rec., 24-25 and 41.) **From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employees with regard to wages.** (Printed Rec., pp. 25 and 41.)

About the 20th day of April, 1914, the Tri-City Central Trades Council sent a committee headed by Earl Galloway, its president, to the plant of petitioner to remonstrate with the management against the scale of wages then being paid. Upon their application for admission at the gate of the plant, one of the members, the president, Earl Galloway, was admitted to the office of Mr. Walcher, the manager of petitioner. **Mr. Walcher inquired of Galloway if any of the committee was an employee of the Company or represented any of the employees of the Company, to which Mr. Galloway replied that they did not.** Mr. Walcher stated that the visit of this committee was rather peculiar; that he had never heard of any complaint from any of his employees, and was very much surprised, and stated further that if any of the employees had any complaint to make in regard to wages or working conditions that he was willing to listen to them as often as may be necessary. (Printed Rec., 25.)

The Tri-City Central Trades Council is an organization composed of six delegates from local organizations, which forms a central body. There are 37 affiliated bodies, composed of the building trades, carpenters, painters, plumbers, building laborers, plasterers, lathers, moulders, electricians, machinists, mill men, barbers, bar tenders, clerks and various other trades. Each organization is entitled to six delegates. Earl Galloway, the president, testified that the object of the Council is to "better the condition of the working classes; make conditions so that they can receive more of the wealth they produce and better working conditions

in general, and that his membership in the Council is by virtue of being a member of the Plumber's Union." (Printed Rec., 43.)

Promptly after the interview between Galloway and Walcher the manager of the petitioner, the respondents entered upon a conspiracy to force the petitioner to either operate its plants upon such terms as the respondent, the Tri-City Central Trades Council, should dictate or to close its plant.

In pursuance of such conspiracy, about the 22nd of April the **Tri-City Central Trades Council declared a strike at the plant, and circulated hand bills calling upon workmen and all labor to stay away from the plant as a strike was on.** (Printed Rec., 24.)

The hand bill is as follows:

"UNION MEN
AND ALL LABOR
STAY AWAY
FROM THE
AMERICAN STEEL FOUNDRY
GRANITE CITY, ILL.
ALL TRADES ARE ON STRIKE

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means.
COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL.

Endorsed by Tri-City Central Trades Council." (Printed Rec., 24; Exh. B.)

In response to this action but two men (Printed Rec., 41), Isaac Cook and Tom Churchill (of the 375 men employed) left their work (Printed Rec., 24), and these men left without even making a complaint

to the manager (Printed Rec., 24), **and left only because the strike was on and they were ordered out by the respondent, Tri-City Central Trades Council.** (Printed Rec., 56 and 53.)

The "strike" of the Tri-City Central Trades Council having brought out only these two men, the Tri-City Central Trades Council, in furtherance of its conspiracy, proceeded on April 24, 1914, to place a body of pickets about the plant. These pickets were in a number of groups, usually consisting of three or four men, up to eight or ten men, in each group. (Printed Rec., 26.) This picketing failing to win the employees of the petitioner, the respondents to further carry out the unlawful conspiracy to force out the petitioner's men and close down its plant, entered upon a persistent course of intimidation and assaults upon the petitioner's employees, and threatened to destroy the property if necessary to accomplish their end. The assaults were numerous, were wanting in provocation and were brutal, and finally culminated in a general riot brought on by about 200 men, consisting of the pickets placed around petitioner's plant and those associated with them, and among whom were recognized Earl Galloway, the president of the Council, and others of the respondents. (Printed Rec., 29.)

Written application for protection was made by the petitioner to the Mayor of the city. (Printed Rec., 24.) The Mayor promised protection, but failed to furnish it. (Printed Rec., 47.) The Mayor was a witness in behalf of the respondent Trades Council, and testified that he was a member of the Socialist party, and elected on that ticket as

Mayor of the city; that prior to his election he was a steel worker in a steel mill for about ten years, and at the present time held an honorary membership in the Amalgamated Iron, Steel and Tin Workers, and that his sympathies were with the respondents. (Printed Rec., 47.) Application for protection was also made by the petitioner to the Sheriff of the County (Printed Rec., 24); the Sheriff promised to investigate, but neither offered nor gave protection. (Printed Rec., 49.)

On the 18th day of May, 1914, the petitioner's bill of complaint was filed in the United States District Court for the Southern District of Illinois, and application made for a restraining order. (Printed Rec., 1, 9.)

The order was issued on the morning of that day (Printed Rec., 10), and the Marshal went to Granite City that evening to serve it. After the issuance of the restraining order, and just prior to the arrival of the Marshal, a number of pickets assaulted, without provocation, two other employees of the plant, and left them lying unconscious upon the walk. (Printed Rec., 27.) From the time the restraining order was served until now, the plant has operated without any trouble, and has had an abundance of capable and efficient workmen to conduct its operations. (Printed Rec., 23 and 41.)

Answers were filed (Printed Rec., 15.) by the respondents to the petitioner's bill for injunction, and on June 8, 1914, the District Court proceeded to final hearing upon the pleadings and the evidence offered in open court. (Printed Rec., 20.) Thirty-four witnesses were sworn and testified orally. Documentary

and record evidence was offered by both parties. At the close of the testimony the case was decided by the Presiding Judge (Humphrey), (whose opinion appears at page 62, Printed Rec). On June 9, 1914, a final decree containing permanent injunction was entered. (Printed Rec., 66.)

The form of the injunction as entered by the District Court is as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Issac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with

it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

From the final decree an appeal was prosecuted to the United States Circuit Court of Appeals for the Seventh Circuit. The appeal was argued on January 26, 1915, a re-argument was ordered on May 23, 1916, and on December 6, 1916, an opinion was filed (Printed Rec., 87) reversing the decree of the

District Court, with direction to modify the same in accordance with the views expressed in the opinion. The suggested modification is as follows:

> "In so far as the decree restrains all picketing and all persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the *Allis-Chalmers* case will afford sufficient and proper guidance for the modification of the decree herein."

The Court of Appeals having failed to definitely fix the form of modification, we must have reference to the opinion and order in *Iron Moulders' Union* v. *Allis-Chalmers Company,* 166 Fed., 45, for more definite information on the subject. The modification in *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* apparently adopted by the Circuit Court of Appeals substantially eliminates from the final decree in the instant case any injunction against persuasion, against picketing and against interference with the lawful conduct of the business of the petitioner unless such persuasion, picketing and interference are accompanied by intimidation, force and assault.

The bill for injunction was not a bill to restrain the organization of a Union; it was not to restrain any employee from abandoning his employment; it was not a bill to keep the peace; it was not a bill simply to enjoin a mob and mob violence. Neither

the right of any laborer or any number of laborers, to quit work was challenged, nor the right of any employee of the petitioner to strike and abandon his work is involved. The scope and purpose of the bill was to restrain an unlawful combination and conspiracy of and amongst the respondents, none of whom were employees of the petitioner, nor representatives of the petitioner's employees, from interfering with the petitioner in the operation of its plant and from interfering with its employees in their right to work for the petitioner and discharge their contract obligations to the petitioner.

The conspiracy aimed at involves **no right of a union to strike, nor any right of any union to call away its members from the work at this plant. The bill here was to enjoin meddlers and strangers to the petitioner and the petitioner's employees from carrying out a conspiracy to force and compel the employees of the petitioner to strike, when the employees themselves did not and would not strike—and to close down the plant of the employer unless the demand of these interlopers and strangers for a change in wages then satisfactory to the employees was granted—the employees, themselves, not asking any change.**

PETITIONER'S BRIEF.

I.

Facts.

(a) Respondents entered into an unlawful combination and conspiracy to injure and interfere with the property and business of the petitioner; to force and compel the employees of the petitioner to violate their contracts of employment with the petitioner; to compel the employees' abandonment of their employment with the petitioner; to force petitioner to change and raise its scale of wages paid to its employees without complaint or authority of the employees; to force petitioner to raise the scale of wages paid to its employees or suffer shutting down its plant and destruction of its property.

(b) Respondents sought to effectuate and carry out their unlawful combination and conspiracy through the means and instrumentality of pickets, violence, intimidation and assault.

(c) Respondents were utter strangers to petitioner. Respondents as third parties unconnected with either the petitioner or its employees, and without authority of its employees, formed the illegal combination and conspiracy to force petitioner to change and raise the scale of wages being paid and satisfactory to its employees.

(d) Respondents through a Committee, none of whom was an employee of the petitioner, sought to carry out the foregoing illegal combination and conspiracy by demanding change and increase in scale

of wages paid to the employees, without representing the employees or being authorized by such employees to act for them.

(e) Respondents for the purpose of effectuating and carrying out such illegal combination and conspiracy without representing the employees or being authorized to act for them "struck" the plant and business and operations of petitioner, and by pickets, intimidation, force and assault upon the employees and the property of the petitioner sought to force the employees to violate their contract of employment; to abandon and terminate their service with the petitioner; to prevent the employees from continuing their work and service at the plant of the petitioner; to "shut down" the petitioner's plant and operations unless it complied with the demands of the respondents to raise the scale of wages, in the absence of complaint or request for such increase from the employees themselves; to destroy the property of petitioner if necessary to carry out their illegal combination and conspiracy.

II.

Petitioner's bill of complaint is based upon statutes and the decisions of the Supreme Court of the State of Illinois, which should control the decision in this case.

Section 46, Chapter 38, Criminal Code, as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * **business or employment or property of another**

* * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

Section 158, Chapter 38, Criminal Code, as follows:

"If any two or more persons shall combine **for the purpose of depriving the owner or possessor of property of its lawful use and management,** or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

Barnes v. *Typographical Union,* 237 Ill., 425.

Doremus v. *Hennessey,* 176 Ill., 608.

Burgess v. *Seligman,* 107 U. S., 20.

III.

The rule in Illinois followed by courts in other states and jurisdictions.

Atchison, Topeka & Santa Fe v. *Gee,* 139 Fed., 582.

Beck v. *Railway Teamster's Protective Union,* 77 N. W., 13.

Gompers v. *Bucks Stove & R. Co.,* 221 U. S., 418.

Jones et al. v. *Van Winkle Gin & Machine Works,* 131 Ga., 336 (62 S. E., 237).

Sailors Union v. *Hammond Lumber Co.,* 156 Fed., 450.

IV.

Iron Moulders Union v. *Allis-Chalmers Co.*, 166 Fed. Rep., 45, not applicable or authority in this case.

V.

The law as laid down in *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S., 229, is decisive of the instant case. The rule there announced is sustained in cases in other states and jurisdictions.

Old Dominion Steamship Company v. *McKenna*, 30 Fed. Rep., 48.

United States v. *Haggerty*, 116 Fed. Rep., 510 (C. C. W. Va., 1902).

Casey v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep., 135 (C. C. Ohio 1891).

State v. *Glidden*, 8 Atl. Rep., 890 (Conn. 1887).

Jersey City Printing Co. v. *Cassidy*, 53 Atl. Rep., 230 (N. J. 1902).

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Atl., 152, 1901.

Flaccus v. *Smith*, 199 Pa., 128.

VI.

Force and violence used by respondents to effectuate and carry out their illegal combination and conspiracy so brutal and so lawless that permanent injunction most comprehensive in form and general in terms necessary for the protection of petitioner's business and property and employees.

Sailors Union v. *Hammond Lumber Co.*, 156 Fed. Rep., 450.

ARGUMENT.

I.

Facts.

There were three issues of fact presented by the pleading on the hearing in the District Court.

First, The combination and conspiracy of the respondents to injure and interfere with the property and business of the petitioner. There was no dispute of the facts on that issue. The respondents admitted calling the strike and the purpose thereof. The District Judge made his finding with reference to such conspiracy, as appears in his opinion (Appendix), as follows:

> This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trade of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of

sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests; viz., the freedom of the individual to contract. If a man has anything to sell--suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for the hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. **This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it.** (Printed Rec., 62.)

This unlawful purpose stands admitted, and one of the respondents on cross examination boldly testified (Printed Rec., 56):

"I wanted to get all the men out of the plant. I wanted to quit work and didn't want anybody else to work in my place. I knew if they didn't have men to fill my position the plant couldn't run and I was trying to keep them from getting men to fill those positions. I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the man not to take the places of the strikers the Company would restore the wages. **I was trying to make them restore the wages or close down the plant.**"

Counsel for respondents in the brief filed in this case in response to the petition for *certiorari* freely states on page 35:

> "**And, in this case had the petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.**"

The evidence of conspiracy is clear. There can be no dispute in that respect. The Judge of the District Court saw and heard the witnesses as they testified, and his opinion and decision under the circumstances should be persuasive, indeed conclusive, on the facts.

Second. The second issue of fact is the carrying out of the conspiracy and combination through the means and instrumentality of pickets, violence, assaults, and threats to destroy petitioner's property. While here and there some one of the respondents sought to place a different construction upon the

cause and character of the assaults, nevertheless the fact, and the evidence supporting the fact, remain practically undisputed, and upon this point the District Judge made his finding, as shown in his opinion (Appendix), as follows:

> The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful.
>
> However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes,

which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There can be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you. (See Printed Rec., 64.)

And the Circuit Court of Appeals on this point says (Appendix):

"Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which, if carried out, would have resulted in the destruction of property. **The District Judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.**" (See Printed Rec., 89-90.)

Although we contend any form of picketing—even peaceful and unthreatening—was not permissible and was properly restrained by the District Judge, we shall later in this brief call attention to the evidence upon the picketing practiced in the instant case which makes the expression of the Circuit Court of Appeals, though sustaining the District Judge, a colorless finding upon indisputable evidence of brutality and lawlessness.

Third. The third issue of fact in the case is that the respondent, Tri-City Central Trades Council, called the strike at petitioner's plant; that at the

time such strike was called the plant of the petitioner was in peaceful operation; that no complaint or dissatisfaction with reference to wages or working conditions existed amongst the employees of the petitioner, and none had up to the time of the strike been expressed to the petitioner or its management; **that none of the employees of the petitioner were members of the respondent, Tri-City Central Trades Council; that the respondent, Tri-City Central Trades Council, did not represent any of the employees of the petitioner; that the respondent, Tri-City Central Trades Council, was a stranger to the petitioner, and had no relationship to it**; that the only men who responded to the call of the strike by the respondent Trades Council were Churchill, who was not a member of the Trades Council, but was a member of the Machinists' Union, and Cook, who was not a member of the Trades Council and had never been a member of any union.

The evidence upon this issue of fact is indisputable. The Circuit Court of Appeals, however, without justification in the record, and without evidence to warrant it, says (Appendix):

> "Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest."

In view of this statement in the opinion of the Circuit Court of Appeals, we feel constrained to call this court's attention to all the evidence in the record on this subject.

Mr. Walcher, the manager of petitioner, testified (Printed Rec., 24):

"At no time between April 1, 1914, and the time the restraining order was issued was either the defendants McKenny, Galloway, Thornberg, (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time."

Printed Rec., 40:

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want?

"A. I think not. . .

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none."

* * * * * *

Printed Rec., 41:

"Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from any one in our employ."

"When we closed in November all our employes were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever applied for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that."

Earl Galloway, president of Tri-City Central Trades Council, testified (Printed Rec., 45):

> "I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there."

B. F. Lamb testified (Printed Rec., 47):

> "My business is representing the Union National Association of Machinists; I am a machinist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my district, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council."

Printed Rec., 48:

> "I never worked for the American Steel Foundries."

W. J. Hartbeck testified (Printed Rec., 50):

> "I live at St. Louis, am a blacksmith, a member of the blacksmiths' union and have no connection witth the Central Trades Council of Granite City."

Printed Rec., 51:

> "I never worked for the American Steel Foundries."

Harry McKenny testified (Printed Rec., 51):

> "I live in Granite City and am a steam fitter and belong to one of these unions."

Printed Rec., 52:

> "I am a steam fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man."

Thomas Churchill testified (Printed Rec., 52):

"I am a machinist. I was working for the plant when it closed down in November and went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member."

Printed Rec., 53:

"At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. **I quit because these fellows asked me to go out.**"

Ted Ishman testified (Printed Rec., 54):

"I am a craneman and reside at Granite City, a member of the cranesmen's union affiliated with the Tri-City Central Trades Council."

Printed Rec., 54:

"I was not working at the plant this spring after it resumed operations."

Clay Holmes testified (Printed Rec., 55):

"I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

C. E. Gerlich testified (Printed Rec., 55):

"I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I work at the Commonwealth plant, about two blocks away from this plant."

Isaac Cook testified (Printed Rec., 56):

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up."

* * * * * *

"I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, and **I quit because they said there was a strike on.**"

C. L. Burton testified (Printed Rec., 57):

"I reside at Granite City, an Alderman of the Fifth Ward. I work at the Madison Car Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries."

Edward Wade testified (Printed Rec., 58):

"I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council."

E. H Taylor testified (Printed Rec., 59):

"I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council."

* * * * * * *

"I was not working for the American Steel Foundries."

Ed Roach testified (Printed Rec., 59):

"I am a machinist, a member of their union and reside in East St. Louis."

* * * * * * *

"I haven't worked for the foundries since a year ago this month."

T. M. Cavanaugh testified (Printed Rec., 57 & 58):

> "At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday the 19th."
>
> * * * * * * *
>
> "On April 15th we had a communication from the unions representing some of the trades working at the Foundries. We had complaints from the men themselves working at the foundry. I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

We have quoted from the evidence of all the witnesses in the case, respondent or otherwise, and the court will observe that **no member of the Trades Council was working for or was an employee of the petitioner at the time in question.** The only two employees of the petitioner, as we have above shown, who quit because of the interference by the respondent, Trades Council, were Cook, who was **not** a member of the Trades Council nor a member of any union, and Churchill, who was **not** a member of the Trades Council, but claimed to be a member of a Machinists' Union. The testimony of Cavanaugh does not support the statement in the opinion of the Circuit Court of Appeals that "many

of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council."

Cavanaugh testifies that they had complaints from the men themselves working at the foundry; that he can't state their names, nor state the name of any employee who made any complaint. Surely this testimony of Cavanaugh cannot be construed into proof sustaining the statement of the Circuit Court of Appeals just quoted. We repeat there is no evidence in this record that any of the employees of the petitioner except one, Churchill, was a member even of any union. The record is barren of any connection or relationship between the Tri-City Central Trades Council and the petitioner, or its employees.

Even Earl Galloway, the president of the Trades Council, with reference to the meeting with petitioner's manager before **it called the strike** testified as follows (Printed Rec, page 44):

> "A Committee was appointed by the Central body to wait upon this corporation to arbitrate the question. I forget all of the Committee; they were ten and I was one of them. We went to the plant and the gate man informed me the spokesman or chairman would be permitted to enter. As chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; **he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions**; he stated that he would not meet with any representative of or-

ganized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back.

"This was about the 20th or 21st of April. **It was reported back to the joint board and a strike was declared on the plant.** Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

Walcher, the manager of petitioner's plant, testified, as above quoted (Printed Rec., 41):

"Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organizations; **I asked him if the Committee represented our employees and he said they did not,** and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees."

The court will note not only that the statement of the Circuit Court of Appeals above quoted is unsupported by the evidence in the record, but is in the very teeth of the testimony, which conclusively and indisputably refutes that statement. And it appears clearly and conclusively that the employees of the petitioner did not strike; that the employees of petitioner did not complain, either of wages or of conditions; that the employees of petitioner did not express dissatisfaction or discontent; that the employees of petitioner did not interfere with the operation of the petitioner's plant or leave its employ, but that, **the Tri-City Central Trades Council and its**

officers, total strangers to the petitioner, "struck" the plant. The Tri-City Central Trades Council, neither representing the petitioner's employees nor even claiming to represent them, sought not only to coerce the petitioner into a change of the terms of contract between itself and its employees without knowledge or action on the part of the employees, but even sought to coerce the employees and workers themselves to violate their contracts with their employer; terminate their relationship with their employer; leave the employment of their employer, and to cause a strike at the plant; and purely in a meddling and interloping capacity secure a wage which the employees themselves did not seek; and if that end could not be attained in any other way, resort to intimidation, violence, assault and, if necessary, destruction of petitioner's property.

II.

The Statutes and Decisions of the Supreme Court of Illinois Should Prevail.

The Circuit Court of Appeals rested its decision upon *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* and the cases there cited, and entirely ignored the fact that the bill filed here is bottomed upon two sections of the Criminal Code of the State of Illinois and upon the principles of law applicable to the facts, as established by the Supreme Court of Illinois, and making the rule in Illinois with respect to the subject-matter here controlling.

The two sections of the Criminal Code referred to are:

Section 46, Chap. 38, entitled "Criminal Code" of the State of Illinois, which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * **business or employment or property of another** * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

The other section of the statute is Section 158 of the same chapter, reading thus:

> "If any two or more persons shall combine **for the purpose of depriving the owner or possessor of property of its lawful use and management**, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

The court will note as above quoted from the opinion of District Judge Humphrey (Printed Rec., 62):

> "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a **combination is unlawful.**"

The law of Illinois applicable to the case at bar is well settled.

Barnes v. *Typographical Union,* 232 Ill., 425, in which Justice Cartwright says, at page 431:

> "It is clear that the union and its members were not in competition with the complainant in respect to labor or anything else. The members of the union had left the service of the complainants, and their only purpose was to prevent the complainant from carrying on their business. They were endeavoring to compel the complainants to submit to their dictation by depriving the complainants of their legal right to employ such laborers as they might choose. If there is a combination to injure a person because he refuses to comply with some demand where he has a legal right to refuse, there is no way of classifying such acts in furtherance of such purpose as competition. The acts alleged in the bill were directed primarily against the complainants for the purpose of doing them harm, and that sort of action is not lawful competition.
>
> "The whole scheme as set out in the bill was to injure the complainants for the purpose of compelling them to yield to the union their absolute legal right to manage their own business in their own way * * * **it follows that any interference with that right whether by threats or intimidation or by persuasion accompanied by actual malice is a legal wrong.**"

At page 434 the court further says:

> "The facts stated in the bill authorized an injunction to prevent carrying out the scheme of the defendants.
>
> "It is next contended that if any injunction was authorized, the injunction granted was too broad in enjoining appellants from peaceful picketing of complainants' premises and from

congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment. It is contended that a peaceful picket line around a shop is entirely lawful. But this court has held otherwise in *Franklin Union* v. *People, supra,* where endorsement was given to the doctrine of *Beck* v. *Railway Teamsters' Protective Union,* 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in *Vegelahn* v. *Guntner,* 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the

watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of what is lawful or unlawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants were entitled to be protected from the annoyance.

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence. (*Curren* v. *Galen*, 152 N. Y., 33.)"

In the case of *Doremus* v. *Hennessey*, 176 Ill., 608, the court speaks in the following language:

"The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere

with another in the conduct of his lawful business, **and any attempt to compel an individual firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees, is not only unlawful and actionable, but is an interference with the exercise of the highest civil right. * * * All parties to a conspiracy to ruin the business of another because of his refusal to do some act against his will or judgment are liable for all overt acts, illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not.''**

We revert here again to the admitted purpose of the Tri-City Central Trades Council in striking petitioner's plant as admitted on the trial and proved by the testimony of the defendant Cook, page 56:

> **''I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the men not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant.''**

and confirmed in counsel's brief in answer to the petition for *certiorari*, page 35:

> **''And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.''**

To overcome the petitioner's contention that the Illinois rule, as expressed in *Barnes* v. *Typographical Union, supra*, should obtain and be followed in the case at bar, counsel for respondents, in his reply to petition for certiorari, cited *Kemp* v. *Division No.*

241 Assn., 255 Ill., 213. A reading of the majority opinions in that case will demonstrate clearly that *Barnes* v. *Typographical Union, supra,* was not overruled or intended to be overruled; also that it does not bear upon the question involved here. The purpose of the bill in that case as stated by the court there, was as follows:

> "The only reasonable conclusion to be deduced from the allegations and prayer of the bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment **in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men** who, after receiving benefits through their organization refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees **in accordance with the vote previously taken by the union employees as members of the union,** where the purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work."

The court will note that the question of whether or not there should be a strike was submitted to and voted upon by the employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company was upon the express authority conferred by the vote of the employees.

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without authority or request of the employees.

The court in *Kemp* v. *Division No. 241 Assn., supra*, further says:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. **If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.** If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer."

III.

Iron Moulders Union v. Allis-Chalmers Co., supra Not Applicable or Authority in This Case.

The purpose proved is clearly contrary to the statutes of the State of Illinois and contrary to the law of that state as established by the decisions of the Supreme Court.

The Circuit Court of Appeals saw fit to ignore and disregard the statutes of Illinois and the decisions

of the Supreme Court of that state. It undertook to decide this case upon the authority of *Iron Moulders' Union* v. *Allis-Chalmers Company, supra.* That case we insist is not authority in support of the decision, and the cases cited in support of the rule there laid down deal with an entirely different class of cases than the case at bar, and do not sustain the opinion of the Circuit Court of Appeals herein. Indeed, Judge Grosscup, a member of the court deciding *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* in a separate opinion demonstrates that the decision there is inapplicable to the instant case and rather prophetically anticipated just such a misinterpretation and misapprehension of that decision as has happened here.

In each of the cases cited by the Circuit Court of Appeals in support of its opinion there **existed a controversy between employer and employee**; a strike had been called by the **employees** and **not by any stranger** to the employer, nor outside organization not representing the employee.

As a matter of fact it cannot be said that there ever was a strike in the ordinary acceptation of the term. There was here a deliberate conspiracy and undertaking on the part of this Trades Council for reasons and purposes of its own, to strike down the industry of the petitioner; to force and coerce the employees who were satisfied and contented to leave their employment; violate their contracts of employment with their employers; dictate to the petitioner terms and conditions upon which it could employ its men; substitute itself for the employer and the employee as the contracting parties, and in

that respect, failing to secure more than two of the employees to withdraw from the plant, proceeded to intimidate, assault, beat and injure the employees of the petitioner, and that not being sufficiently effective threatened to destroy the petitioner's plant.

The lexicographers have defined what a strike is, and in every instance the definition proceeds upon the theory that it is bottomed upon a controversy between **employer** and **employee**.

Bouvier's Law Dictionery defines a strike as follows:

> "A combined effort by workmen to obtain higher wages or other concessions from their employers by stopping work at a pre-concerted time."

The evidence in this record shows there was no such act by the workmen and employees of this petitioner.

Black's Law Dictionary, defining a strike, says:

> "The act of a body of workmen employed by the same master in stopping work altogether at a pre-arranged time and refusing to continue until higher wages or shorter time or some other concession is granted."

The evidence in this record shows that the body of workmen employed by the petitioner did not stop work at a prearranged time or any other time, and did not refuse to continue their employment until higher wages or shorter time or other concession was granted.

The Century Dictionary defines a strike to be:

> "A concerted or joint quitting of work by a body of men or women for the purpose of coercing their employer in some way as when higher

> wages or shorter hours are demanded or a reduction of wages is resisted—a joint refusal to work as a coercive measure."

The evidence in the case shows the men did not quit work for the purpose of coercing petitioner; on the contrary it shows the men were contented and without complaint.

In *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* the controversy arose out of a **strike of the employees** of the Allis-Chalmers Company as a result of a united effort on the part of the members of all foundries unions. And in the separate opinion Judge Grosscup called attention to the differentiation between a case involving a strike of **the employees actually pending,** as against an effort, without such strike existing, to interfere with the business of the complainant, as occurred in the case at bar. Judge Grosscup says:

> "And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, **neither strike nor lock-out pending,** persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employees not to take employment with given employers, **upon which questions we do not, as I understand it, express** any opinion."

Judge Grosscup in this separate opinion defines a strike as follows: "A strike is cessation of work **by employees** in an effort to get for the employees more desirable terms."

The court will find that in each of the other cases cited in support of the authority of *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* there was an actual dispute between employer and employee and an actual "strike" by the employees.

In *Pope Motor Car Co.* v. *Keegan,* 150 Fed., 148, it appears affirmatively that there was a strike by the employees of the Pope Motor Car Company, and the strike was due to a refusal to submit to the diction of Keegan and Keck, who were officials of the International Association of Machinists, **and that all the defendants in that case except Keegan and Keck had been in the employ of the complainant company, and at the time of the filing of the bill were out on a strike.**

In *Karges Furniture Co.* v. *Amalgamated Wood Workers' Local Union,* 165 Ind., 421, it appears on April 1, the demands upon the employers not having been complied with, **all the plaintiff's employees but about twenty non-members of the union, each one acting voluntarily in concert with others, and in pursuance of the agreement and vote, quit their employment and left the plaintiff's factory.**

In *Everett* v. *Typo Union,* 105 Va., 188, it appears:

> "In September, 1905, the Typothetae finally refused to grant the eight-hour day, and thereupon the Typographical Union instructed the local unions in the different cities of the United States (among them the City of Richmond) to declare a 'strike' where the eight-hour day was refused; and the appellants, members of Richmond Typothetae, the owners and operators of printing establishments in the City of Richmond, still refusing to grant the eight-hour

> day, Typographical Union No. 90, **the employees of appellants, on September 11, 1905, went out on a 'strike.'"**

In *Jones* v. *Maher*, 116 N. Y. Supp., 180, it appears that the employer in that case made certain discharges, including five foremen, and it further apears (page 182):

> **"Upon the discharge of the foremen, most of the people working under them left with them at noon, and when Schofield arrived, others, including the defendant Volkman, one of the foremen discharged that day, also left the factory. The discharged foremen and the employees who had stayed out or gone out, some 70 to 90 in all, thereupon held a meeting, and with the aid and counsel of Schofield organized a strike."**

Gray v. *Building Trades Council*, 91 Minn., 171, was a case of boycott involving a controversy between electrical contractors and engineers and various trades.

Though this case does not involve the questions presented in the case at bar, and therefore is not an authority, yet we find the statement that **a strike must involve a quitting of the service of the employer,** and in the case at bar there was no quitting of the service by the employees of the petitioner because there was no strike by them. As is disclosed by the record, **only two employees left because the Tri-City Central Trades Council had called a strike, and not because the employees either were dissatisfied or struck.**

In re Ex parte Heffron, 139 Mo., 639, the statement of the facts does not clearly demonstrate the relations of the parties in the case, but it is dis-

closed sufficiently from the decree that the case involved the acts of the employees.

In *Jones* v. *Van Winkle Gin & Machine Works,* 131 Ga., 336, it appears clearly from the statement of the case by Presiding Judge Evans that the action was against persons who were employees of the plaintiff, but who were on a strike. It is interesting to note that the opinion in this case is authority in support of the contention of petitioner, especially as applied to picketing and the manner thereof indicated in the opinion of the court in the case at bar.

Iron Moulders' Union v. *Allis-Chalmers Company, supra,* in its own facts and in the facts of the cases cited in support of that decision, is entirely inapplicable to the facts in the case at bar. The Circuit Court of Appeals wholly misapprehended the decision in that case, seemed to give no consideration to the difference in the facts and circumstances existing there, and paid no heed to the very differentiation expressed by Judge Grosscup in his separate opinion.

But even were *Iron Moulders' Union* v. *Allis-Chalmers Company, supra,* applicable to the instant case in its facts and in its conclusions, still it was not authority for the decision here, against the statutes of the State of Illinois and the law of Illinois as established by the decisions of the Supreme Court in *Barnes* v. *Typographical Union, supra,* and other cases cited.

We insist there is here involved a strict rule of property upon which the Supreme Court of Illinois has spoken; and even in equity the Federal Courts will respect and enforce the laws of

the state where either the construction and interpretation of state statutes and State Constitution are involved (and such are not in contravention to the Federal Constitution), and where a rule of property is involved.

On the bill of complaint in the case at bar an injunction was granted to protect the petitioner in its property and its right of property, amongst which is the contractual relationship between itself and its employes; its right to the lawful pursuit of its business and property, free from annoyance, interference and destruction, as was here practiced and undertaken, and also to enforce its rights under Sections 46 and 158 of Chapter 38 of the Criminal Code of the State of Illinois.

This court has sustained our contention in this respect, in *Burgess* v. *Seligman*, 107 U. S., 20, where the court said:

> "Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate, **and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.** But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have

accrued thereon under a particular state of the decisions, or when there has been no decision of the state tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. **But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt.** Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State courts."

IV.

The Rule in Illinois Relating to Picketing Without Physical Violence Is Sustained in Other States and Jurisdictions.

In *Atchison, Topeka & Santa Fe v. Gee*, 139 Fed., 582, the court says, at page 584:

"But as to one phase of the case there is no denial, but practically a confession, with the alleged and boasted right to practice it. A system of 'pickets,' for more than a year, around and near by places to the shops of the company, has been kept up by all the accused and others. The pretense of this picketing is the right to converse with the new employees and persuade them to quit, and the further pretense that they desire to see who are at work. This picketing is done by details of pickets, assigned by others, they taking turn. At all hours when

men are going to and from work, morning, noon and evening, the workmen must go through and by pickets, sometimes two, four, six and more, at a place. At times the paths and walks are obstructed. At times the pickets are near by, making grimaces, and at times acting as if violence were intended, and at times uttering profanity and vulgarity. **There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. When they only want to see who are at work, they go and see, and then leave and disturb no one physically or mentally. But such picketing as is displayed in the case at bar by the evidence does, and is intended to, annoy and intimidate. The argument seems to be that anything short of physical violence is lawful.** One man can be intimidated only when knocked down. But the peaceful, law-abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. Perhaps such a man may not be a bully, but is frail in size and strength, or he may be a timid man; but such a man is just as much entitled to go and come in quiet, without even mental disturbance, as has the man afraid of no one and able with or without weapons to cope with all comers. The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

In *Beck* v. *Railway Teamster's Protective Union*, 77 N. W., 13, the court says, at page 22:

"**It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce.** As applied to cases of this

character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

The court in *Gompers* v. *Bucks Stove & R. Co.*, 221 U. S., 418, said:

"But the very fact that it is lawful to form these bodies (labor unions), with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve **the sacrifice of rights protected by the constitution**; or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

In *Jones et al.* v. *E. Van Winkle Gin and Machine Works*, 131 Ga., 336 (62 S. E., 237), the court says:

"Other cases similar in principle might be added, but these are sufficient to illustrate our point, which is that when strikers patrol the streets and approaches of the premises where the strike is in progress, and their number is so great, or their conduct is such, as to intimidate and coerce the employees into quitting

their employment, or others from seeking employment, they are guilty of unlawful acts, and will be enjoined from a continuance of them. Sometimes the number of strikers engaged on the patrol may be so great that those intended to be affected by the demonstration will be intimidated by the number of the strikers or their sympathizers without special overt acts. **The courts have repeatedly held that the assembling of strikers around the establishment of the employer in such numbers as will serve as a menace to those employed, or the keeping of patrols in front of or about the premises of the employer, accompanied by violence or any manner of coercion to prevent others from entering into or remaining in his service, will be enjoined.**"

Also in *Sailors Union* v. *Hammond Lumber Co.*, 156 Fed., 450 (454), the court says:

"But it is said that the injunction goes further than the law permits, in that by its language it prohibits the appellants from doing that which they have the lawful right to do. By the order of the court the appellants are enjoined 'from in any wise interfering with the crews, foremen, cooks, stewards, seamen, or either of them, or any of the servants or employees of the said steam schooners or steamship or either or any of them, without due process of law; * * * from in any wise interfering with the business of the said steam schooners and said steamship except by due process of law, with the business of complainant or orator of and concerning the said steam schooners and the said steamship; * * * and from in any wise conspiring, colluding or confederating together for the purpose of preventing the said steam schooners and steamship from receiving and discharging freight and passengers.' It is said that under this injunction

the appellants would be in contempt if they asked one of their relatives not to go as a passenger on one of the appellee's steamers, or if they made complaint of the violation of navigation laws of the appellee's vessels, or if they exercised their right to discriminate against the appellee by shipping cargo on other vessels than those of the appellee. The language of the injunction, however, is to be interpreted in the light of the allegations and prayer of the bill, and these may make an otherwise indefinite order sufficiently specific. (*Hamilton* v. *State*, 32 Md., 348.) It is the acts set forth in the bill that the appellants are enjoined from doing."

V.

Hitchman Coal & Coke Co. v. Mitchell, 245 U. S., 229, and Similar Cases Sustain Petitioner's Contentions.

The instant case comes within the decisions of this Court rendered since the decision of the Circuit Court of Appeals. The law as now established by this court clearly entitles the petitioner to retain the injunction granted by the district court in the form fixed in the final decree and unmodified in manner directed by the Circuit Court of Appeals.

The respondents not only have been guilty of violation of the statutes and the laws of the State of Illinois as above demonstrated, but have been guilty of a clear invasion of the rights and property of the petitioner, under the decisions of this court. The respondents for an illegal and unlawful purpose sought and proceeded to interfere with the contract relationship between the petitioner and its

employees. They sought to force and coerce petitioner against its will to make terms and conditions of employment contrary to the existing agreements and contracts between itself and its employees. The respondents entered into and sought to carry out a deliberate conspiracy to force the employees of petitioner, who were satisfied, contented and without complaint either as to wages or conditions of labor, to abandon their employment, to violate their contracts and thereby force the establishment of a new basis of employment between the petitioner and its employees. In this conspiracy the respondents neither represented the employees nor were they authorized to speak for the employees. They were strangers to both and gratuitous meddlers and interlopers in a situation that was tranquil and contented and in which they had no interest.

The case decisive of the instant case is *Hitchman Coal & Coke Co.* v. *Mitchell*, decided December 10, 1917, and reported in 245 U. S., 229.

In that case there was not even present the horrible state of brutality and lawlessness existing and proved in the case at bar. In that case this court holds with the District Court in the case at bar that picketing and persuasion unaccompanied by force and intimidation under the circumstances in that case as well as in the case at bar are not permissible and must be enjoined, and says:

> "Another fundamental error in defendant's position consists in the assumption that all measures that may be resorted to are lawful if they are 'peaceable'—that is, if they stop short of physical violence, or coercion through fear of

it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation. *Flaccus* v. *Smith*, 199 Pa., 128; 48 Atl., 894; 54 L. R. A., 640; 85 Am. St. Rep., 779; *South Wales Miners' Federation* v. *Glamorgan Coal Co.* (1905), A. C., 239, 244, 250, 253; *Jonas Glass Co.* v. *Glass Bottle Blowers' Association*, 77 N. J. Eq., 219, 223; 79 Atl., 262; 41 L. R. A. (N. S.), 445."

In that case as well as here the court holds the employer is entitled to be protected in the enjoyment of the benefits of any lawful employment contract as against the gratuitous interference of an organization such as the respondent, Tri-City Central Trades Council, and says:

"* * * the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power. *Adair* v. *United States*, 208 U. S., 161, 174; 28 Sup. Ct., 277; 52 L. Ed., 436; 13 Ann. Cas., 764; *Coppage* v. *Kansas*, 236 U. S., 1, 14; 35 Sup. Ct., 240; 59 L. Ed., 441; L. R. A., 1915C, 960. In the present case, needless to say, there is no act of legislation to which defendants may resort for justification.

"Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employes, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was 'at will,' and terminable by either party at any time, is of no consequence. In *Truax* v. *Raich*, 239 U. S., 33, 38; 36 Sup. Ct., 7, 9 (60 L. Ed., 131; L. R. A., 1916D, 545; Ann. Cas. 1917 B, 283), this court ruled upon the precise question as follows:

"'It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time, for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable although the employment is at will' (citing many cases).

"In short, plaintiff was and is entitled to the good will of its employes, precisely as a merchant is entitled to the good will of his customers although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employes, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See *Brennan* v. *United Hatters*

(cited with approval in *Truax* v. *Raich, supra*), 73 N. J. Law, 729, 749; 65 Atl., 165; 9 L. R. A. (N. S.), 254; 118 Am. St. Rep., 727; 9 Ann. Cas., 698; *Brown* v. *Honiss*, 74 N. J. Law, 501, 514; 68 Atl., 150 *et seq.*; *Jersey City Printing Co.* v. *Cassidy*, 63 N. J. Eq., 759, 767; 53 Atl., 230; *Walker* v. *Cronin*, 107 Mass., 555, 565-566; *Moran* v. *Dunphy*, 177 Mass., 485; 59 N. E., 125; 52 L. R. A., 115; 83 Am. St. Rep., 289, and cases there cited; *L. D. Willcut & Sons Co.* v. *Driscoll*, 200 Mass., 110, 117; 85 N. E., 897; 23 L. R. A. (N. S.), 1236, etc.

"The right of action for persuading an employe to leave his employer is universally recognized—nowhere more clearly than in West Virginia—and it rests upon fundamental principles of general application, not upon the English statute of laborers. *Thacker Coal Co.* v. *Burke*, 59 W. Va., 253, 255; 53 S. E., 161; 5 L. R. A. (N. S.), 1091; 8 Ann. Cas., 885, 886; *Walker* v. *Cronin*, 107 Mass., 555, 567; *Angle* v. *Chicago, St Paul, etc. Railway*, 151 U. S., 1, 13; 14 Sup. Ct., 240; 38 L. Ed., 55; *Noice Adm'x* v. *Brown*, 39 N. J. Law, 569, 572."

In that case the court holds as contended for here that the right to strike is in the employee and not in an outside organization, and that the difference in rights in that regard is fundamental. See page —:

"The case involves no question of the rights of employes. Defendants have no agency for plaintiff's employes, nor do they assert any disagreement or grievance in their behalf. In fact, there is none; but, if there were, defendants could not, without agency, set up any rights that employes might have. **The right of the latter to strike would not give to defendants the right to instigate a strike. The difference is fundamental.**"

No expression could more concretely and more aptly fit the facts and circumstances in the instant case. The respondents, as proved beyond peradventure, both by admission and by proof, were not employees of the petitioner. The Committee did not come as employees or as the representatives of employees. The employees had no disagreement or grievance, and the respondents were neither authorized nor requested to present to the petitioner a grievance that did not exist. The interference of the respondents was purely gratuitous and unwarranted.

The purpose of the respondents in the case at bar was very much like that found to have been the purpose of the defendants in the *Hitchman* case, as indicated by the following language in the opinion there:

> "To cause your orator's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as your orator shall submit to the demand of the union that it shall unionize its plant, and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the union," etc.

and here the Tri-City Central Trades Council sought to force and coerce the petitioner into paying a different and higher wage to its employees than the contract between itself and its employees; a higher wage than the employees themselves asked for and were satisfied with; and if the change in wage was not made by the petitioner, then the employees should be prevented from working; they should be forced to break and violate their contracts with the

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petitioner; the plant of the petitioner should be shut down, and if necessary brutality and terrorism practiced against the employees and the property of the petitioner destroyed.

There are many other cases in different states and jurisdictions similar in import and conclusion as *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* We call attention to some of the cases, though it would seem unnecessary to do so.

The case of *Old Dominion Steamship Company* v. *McKenna,* 30 Fed. Rep., 48, was an action at law to recover damages from the Longshoremen's Union, which interfered with the business of the steamship company. The court said (page 49):

> "I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions:
>
> "1. All the material averments are either stated positively, or the source of information is sufficiently indicated.
>
> "2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons:
>
> "(a) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in the employment of which numerous workmen were necessary, who, as the complaint avers, were employed 'upon terms as to wages which were just and satisfactory.'
>
> **"(b) The defendants, not being in plaintiff's employ, and without any legal justification, so far as appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit**

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> work in a body, for the purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable."

United States v. *Haggerty*, 116 Fed. Rep., 510 (C. C. W. Va., 1902):

The Guaranty Trust Company of New York filed its bill against Haggerty and others, including Mary, alias Mother, Jones, some of whom are citizens and residents of the State of Pennsylvania, Illinois, Ohio and West Virginia, asking that the defendants be restrained

> "from entering and trespassing upon the lands and property of the Clarksburg Fuel Company; and to restrain them from going on or about the said company's tipples, tracks, or other property, together or individually, so long as they are not in the employment of the said company for the purpose of unlawfully preventing said company's employees in engaging and remaining in its employment; that the defendants, and each of them, be enjoined and restrained from assembling, congregating, or camping at or near the plants, mines, and places of business of the said company's property, or at or near the residences of the said employees, and the paths and roads traveled by the said employees in going to and returning from their work, for the purpose of preventing the employees of the Clarksburg Fuel Company from entering into or continuing in said company's employment by intimidation, threats, or otherwise, whether by

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physical force or otherwise, and whether by actual threats or otherwise to the person, property, or families of the said employees; that they be restrained from unlawfully interfering with the management of the business of the company; that the defendants, their confederates and their associates, be, each and all of them, enjoined from assembling together in camp or otherwise, near the mines of the company, or near the residences of its employees, whereby they would be disturbed, alarmed, or intimidated from working in the mines, and preventing them from passing to and from their houses to the mines, or from doing any personal injury to the person of the employees of the said company or others who are desirous of entering into or remaining in its employment, or interfering in any unlawful way with any person who desires to go into and remain in said company's employment, and from visiting the houses and places of abode of the persons who are in the employ of the company, who are desirous of remaining in the employment of the company, for the purpose of preventing them by threats, menaces, or actual injury to their person or their property, or to the members of their family."

The Clarksburg Fuel Company was the owner of a large number of mines and mining plants, and also owned in fee simple several thousand acres of coal lands and leased almost as many acres more. It was engaged in mining coal and manufacturing coke and shipping the same to the open market in the United States. Its production was immense and its customers resided in all parts of the United States.

There was a general strike in the anthracite regions of the State of Pennsylvania, in which a large number of persons were involved—said to be more

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than 100,000. Those at the head of the organization known as the United Mine Workers of America announced their intention to cause or create a strike among the miners of the soft coal regions of the United States, more particularly in the State of West Virginia, where the Clarksburg Fuel Company produced its coal, **not because of any grievance against the Clarksburg Company, but for the purpose of aiding the strike prevailing in the State of Pennsylvania, and to prevent the shipment of coal to localities that had been theretofore supplied with coal from the anthracite regions in the State of Pennsylvania.**

For this purpose the various defendants, including Mother Jones, who were known as "organizers," "agitators," and "walking delegates," representing the United Mine Workers of America, came into West Virginia, for the purpose of agitating strikes among the employees working for various coal companies, particularly the Clarksburg Company. To that end the defendants Haggerty and Mother Jones addressed various meetings composed in part of coal miners, and thereby attempted to inflame and excite the hatred and animosity of miners towards the proprietors of the Clarksburg Company as well as others, advised the miners to quit work, and in some instances the miners were actually assaulted by the strikers, and in another instance one of the mines belonging to the Clarksburg Company was attempted to be blown up.

All of the above had a bad effect on the employees of the Clarksburg Company, which tended to intimi-

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date those working in the mines and prevent them from continuing in their work.

The bill charged a combination and conspiracy entered into by the defendants with others to bring about a strike; that as the result of the above agitation and acts of intimidation, some of the employees of the Clarksburg Company and others were induced to strike, although most of them preferred to work and remain in the employment of the Company if they could be protected.

A temporary restraining order was entered and served upon the defendants, and the question the court has to consider in the above case is whether or not the defendants violated the court's order, and if so determine what punishment should be imposed upon them for its violation.

> "**It is to be observed that a very large portion of the miners in the employ of the Clarksburg Fuel Company do not want, in the language of one of the agitators who is enjoined, 'to lay down their picks and shovels and quit work.'** I do not question the right of the employees of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the same time I do not recognize the right of an employer to coerce the employees to continue their work when they desire to quit. But can it be said that where a conspiracy exists to control the employees, as in this instance, either by threats, intimidations, or a resort to any other modes usually accompanying the action of strikers, that such action upon their part is not only illegal, but a malicious and illegal interference with the employer's business? The question is its best answer. **While I recognize**

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the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people. In the case we have under consideration these defendants are known as professional agitators, organizers, and walking delegates. They have nothing in common with the people who are employed in the mines of the Clarksburg Fuel Company. The evidence in this case shows that their only object and purpose is to get the people who are in the employment of the Clarksburg Fuel Company to go out upon a strike, as it is termed, for the purpose of compelling the owners of the mines to advance an increase in their wages. It discloses that the miners in the Pinnickkinnick mines are making an average of $4 a day in excess of their legitimate expenses, many of whom have worked in foreign countries for less than a half a dollar a day. The defendants in this case are not laborers in the mines, and have no connection with them whatever. Their mission here is to foment trouble, create dissatisfaction among the employees in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers. In this case there is no dissatisfaction among the large number of the miners. **Only a small part of them have quit the mines from fear of intimidation, threats,**

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and violence, but those remaining in the mines say they will quit work unless they are protected against the threats of these agitators and organizers. The strong arm of the court of equity is invoked in this case, not to suppress the right of free speech, but to restrain and inhibit these defendants, whose only purpose is to bring about strikes, by trying to coerce people who are not dissatisfied with the terms of their employment, which results in inflicting injury and damage to their employers, as well as the employees.

"It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines, whereby the Clarksburg Fuel Company would be greatly damaged. Not only would it be greatly damaged, but it would be prevented from fulfilling its contracts for the future delivery of the product of its mines. The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

Casey v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep., 135 (C. C. Ohio, 1891):

Casey was the proprietor and publisher of the Commonwealth, a daily and weekly newspaper published at Covington, Kentucky. He filed his bill to restrain the defendant, which is a corporation organized as a trades union or labor organization, composed of type-setters and printers, and certain

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individual defendants are the officers and managing agents of said Typographical Union from boycotting the complainant and his newspaper.

The defendant, Typographical Union, demanded that complainant unionize his office, that is to say, publish and conduct his paper according to the dictates of the Typographical Union, not only as to method of publication, but wages to be paid his employees, and employ only such persons that met the approval of the Typographical Union, and discharge certain persons then in complainant's employ.

The complainant refused to comply with said demands, whereupon the defendants all conspired to and did put into execution a very successful boycott of complainant's paper, the various details of which were elaborately set forth in complainant's bill of complaint. The demands of the defendant, Typographical Union, which, if complied with, would have necessitated the discharge of every printer employed by the complainant and the substitution therefor of persons wholly within the control of the Typographical Union. **There was no trouble between the complainant and his employees. Each was satisfied with the relationships existing between them. There had been no complaint upon the part of the complainant's employees. The complaint came solely from other persons not having any financial interest in the affairs of the papers, none of whose members had any right to expect employment by the complainant.**

The court's opinion was rendered upon a motion for a temporary injunction and is one that is cited favorably in many subsequent authorities. The por-

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tion of the court's opinion, however, to which we invite this court's attention is found at page 146 of the report and consists principally of the approval of an opinion of Judge Carpenter of the Supreme Court of Connecticut in the case of *State* v. *Glidden,* as reported in 8 Atl. Rep., 890.

Judge Sage said:

> "In *State* v. *Glidden,* cited hereinbefore, Judge Carpenter, speaking for the Supreme Court of Connecticut, states that the defendants said in effect to the publishing company:
>
> " 'You shall discharge men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business; we have no capital invested therein; we are in nowise responsible for its losses or failure; we are not directly benefited by its success; and we do not participate in its profits—yet we have a right to control its management, and compel you to submit to our dictation.'
>
> "The court said that the bare assertion of such a right was startling; that, if it existed, all business enterprises were alike subject to the dictation and control of those who asserted it, and upon the same principle and for the same reason the right to determine what business men shall engage in, and when and where and how it shall be carried on, will be demanded, and must be conceded to associations of workingmen of the class of those whom it would be necessary to employ. The opinion in this case, although the case itself arose upon an indictment for conspiracy, is a well-considered discussion of the law with relation to boycotting. See, also, *Steamship Co.* v. *McKenna,* 30 Fed. Rep., 48."

State v. *Glidden et al.,* 8 Atl. Rep., 890 (Conn., 1887):

The defendants had been found guilty of a crimi-

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nal conspiracy, the object of which was (1) to compel the Carrington Publishing Company, against its will, to discharge its workmen, and to employ such persons as the defendants and their associates should name; and (2) to injure and oppress the workmen then in the employ of said corporation, by depriving them of their said employment by first demanding the discharge of said employees, and upon such demand being refused, boycotting the Publishing Company.

Judge Carpenter, speaking for the Supreme Court of Connecticut, expressed the views of the court, as follows:

> "Now, if we look at this transaction as it appears on the face of this information, we shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motion was a selfish one—to gain an advantage unjustly, and at the expense of others—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore it was malicious. * * * * * * * *
>
> "The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be dictated by intelligence or ignorance—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be con-

fined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc., will be demanded, and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body of irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it."

Jersey City Printing Co. v. *Cassidy,* 53 Atl. Rep., 230 (N. J., 1902):

The Jersey City Printing Company filed its bill asking for an injunction against Cassidy and others.

Vice-Chancellor Stevenson in his oral opinion concedes that an employer has a right to arbitrarily "dictate" to his employees in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. Likewise employees with certain limitations may dictate how their employer shall conduct his business, so long as the dictation of either is backed up only by a threat of an association of the relations of employer and employee, hence, he holds that employees may inform their employer that unless he does certain things to their liking they will "strike."

At page 232 of the report the court says:

"But the difficult case presents itself when the workmen in combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment where they, the workmen in combina-

tion, desire and intend that no man shall be employed excepting upon their terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of a complainant, but of persons who are merely looking for work, and may become employees of the complainant, can be erected into a legal or equitable grievance on the part of the complainant. But the difficulty is still further increased where the possible employees make no complaint to any court for protection, and the conduct of the molesting party does not afford a basis which the ancient common law recognized as sufficient to support an action of tort on their behalf, such as for an assault and battery, or a slander. Abusive language is not necessarily actionable at common law. If to call a man a 'scab' in the street, or to follow him back and forth from his home to his place of employment, was formerly not actionable on behalf of the victim of this petty annoyance, the problem is to understand how one who is merely the victim's possible employer can complain either at law or in equity; there being no actual contract for service, but only a potential one, interfered with."

Again at 234 of the report the court says:

"I think it is safe to say that, all through this development of strike law during the last decade, no principle becomes established which does not operate equaliy upon both employer and employee. The rights of both classes are absolutely equal in respect of all these 'probable expectancies.' An operater upon printing machines has the right to offer his labor freely to any of the printing shops in Jersey City. These shops may all combine to refuse to employ him on account of his race, or membership in a labor union, or for any other reason, or for no reason, precisely as twenty employees in one printing shop may combine, and arbitrarily refuse to be further employed unless

the business is conducted in accordance with their views. But, in the case of the operative seeking employment, he has a right to have the action of the masters of the printing shops in reference to employing him left absolutely free. **If, after obtaining or seeking to obtain employment in a shop, the master of that shop should be subjected to annoyances and molestation instigated by the proprietors of other printing shops, who combine to compel, by such molestation and annoyance, this one master printer, against his will and wish, to exclude the operative from employment, this operative, in my judgment, would have a right to an action at law for damages, and would have a right to an injunction if his case presented the other ordinary conditions upon which injunctions issue.''**

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Atl., 152, 1901:

A bill was filed against upwards of eighty defendants, asking an injunction to protect the complainants from an alleged conspiracy among the defendants to prevent certain operatives of the complainants from continuing to work for them.

From the statement of facts and opinion of the court the facts do not clearly appear. There is no doubt, however, that the complainant was the owner of what is known as the "Greater Barnert Mill," in Paterson, New Jersey, and the defendants were endeavoring to persuade various women employees from continuing in the employ of complainant.

The court says:

"The right of a master to have a servant continue in his employ without molestation or enticement by any third party is a property right, so recognized by the law, and well within the rule laid down by Vice-Chancellor Green in Barr v. Essex Trades Council, where he shows that

the right of a man to carry on his business is a property right."

Charles L. Flaccus v. *W. J. Smith et al.*, 199 Pa., 128:

This was a case in which the facts very closely resemble the facts in *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* It involved an effort by the American Flint Glass Workers' Union, affiliated with the American Federation of Labor, to compel and induce the complainant's employees to break their covenants or agreements not to become members of the union or connect themselves with the same, with the object of breaking down complainant's factory as a non-union factory either by preventing the operation of complainant's works or compel joining the union. The court says:

"**This is not a controversy between the employer and his employees, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him.** No question is here raised by the employer as to what his employees may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the court below.

* * * * * * *

"The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and

he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system. and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The court found that the interference was injurious to him, and, if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity."

VI.

Brutality and Bludgeon the Form of Picketing and Persuasion Practiced by Respondents.

In this case the conduct of the respondents' conspirators was so violent in its lawlessness, so brutal in its practice, that it comes within the class of cases requiring and justifying injunction because of the resort to intimidation, physical force and destruction. That the opinion and decision of the Circuit Court of Appeals should not in any happenstance fashion mislead this court into the thought or idea that this case involves interference and restraint only by peaceful picketing and peaceful persuasion, and to demonstrate to this court that a modification of the injunction such as was decreed by the Circuit Court of Appeals, not only is unjustified from the facts and proof in the case, but if adhered to, **would encourage and assure an immediate resumption of the force and violence practiced when**

interrupted by the restraining order of the District Court, we bring to the attention of this court the evidence of brutality and thuggery which forced resort to the courts for protection.

As before adverted, the Circuit Court of Appeals in a rather colorless fashion did find that there was justification for the injunction against intimidation and force. Let us see what the evidence in the record is in support of the findings of the District Judge and in proof of the respondents' resort to the bludgeon as a means of peaceful persuasion and peaceful picketing.

A. Walcher testified as follows:

> "As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end. * * * (Printed Rec., 24.)
>
> "Other men besides the defendants were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as machinists, others as workmen that had worked around Granite City at various times, various outsiders." (Printed Rec., 26.)

Steven Hafner testified as follows:

> "* * * On April the 30th as I came to work to the plant I go down on Neideringhaus avenue along side of the Wabash station. I saw Churchill, Gerlich, and Cook on Neideringhaus avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, 'You can't go this way.' And I said, 'Yes, I can.' And he jumped on me and beat me up; I

didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. * * * (Printed Rec., 26.)

"Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me; couldn't see fast enough how they did come on me, then I went between the cars and braced up a little and then I went back home." (Printed Rec., 27.)

Frank Hedstrum testified as follows:

"* * * On May 8th I saw them on Niedringhaus avenue by the Wabash depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the depot on the left hand side of the shop on Niedringhaus avenue. The men at the depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a doctor care for my hand. On May 18 Ira Crawford and myself were walking to work about five o'clock in the evening.

"We were coming down the street when we were intercepted by some men at the corner of 21st and B streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, 'Don't go in to work.' And the next thing

I remember I found myself getting up and nobody around, except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

"On the morning of May 14 I saw Ted Ishman close to the Wabash depot, he said to me that we would continue going in to work until we got our heads knocked off." (Printed Rec., 27.)

Ira Crawford testified as follows:

"I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th, as I was coming from work I saw a bunch of about twenty men near the Wabash depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

"On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C. street towards town. As a result of this assault I couldn't work for two weeks and was treated

by a doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me." (Printed Rec., 28.)

W. C. Quinn testified as follows:

"* * * When I finished my day's work on night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, 'There they go,' and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, 'There, you scabbing s— of b—; don't let him get away from you;' and I tried to cut across the field and they shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and when I regained consciousness all of these men had disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

"On May the 6th I saw Ted Ishman on the corner of Eighteenth street and he told me if we continued to work down there we would get

hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river, too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a taxicab and got away from him. On the following day I met this same fellow and two others on the corner of Fifteenth and Chestnut streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, 'This is the scabbing b—d,' and struck at me, and the two fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down, and the other fellow ran." (Printed Rec., 29.)

Frank Melton testified as follows:

"I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Niedringhause avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, 'Say you, don't you know there is a strike on here?' He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and

they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, 'You won't do it no such a damn thing; you have seen your last time in that shop. You are quitting right now.' There was a heat to come down in a few minutes; they had me tied up and wouldn't let me in; I was pouring man. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near my home. I don't know who jumped me. One of them said, 'There is that crane man at Granite City.' One threw a brick but never hit me, and one ran over and knocked me down; don't know who it was, a hammer or something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

"I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work." (Printed Rec., 30.)

William Francis testified as follows:

"* * * When I left the plant on the night of April 29th I saw Tom Churchill about eight feet from the depot with ten or twelve other men; among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, 'If we didn't stay out in a decent manner they would make us stay out.'

"On the following morning I went to work with Steven Hafner. We met Thornberg and Churchill and they took Steve away from me

and kicked him and beat him in the face with their fists and feet, they then ran away.

"I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four other fellows were on the south side. They headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

"On the 13th of May there was trouble on Neideringhaus avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, south of the stamping works; some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. They commenced throwing bricks. I recognized two or three standing around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked down with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

"Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

"Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this the two fellows before the big crowd come up there, but the other gangs hadn't met us. And the crowd at the depot came up behind." (Printed Rec., 31.)

J. E. Bell testified as follows:

"I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niedringhaus avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and everything at us. I was struck in the back and arms with bricks. About the 8th or 9th of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant." (Printed Rec., 32.)

Edwin Baker testified as follows:

"I run the Royal Hotel in Granite City. I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9th he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and through kitchen where I happened to be. He did not have the baskets with him at that time.

"About three minutes after the porter got there three men came into the place. I didn't know any of them; the spokesman said his name was Harris. He asked me if I was feeding men from the American Steel Foundries. I told him that I was and they told me if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men." (Printed Rec., 33.)

O. P. Floyd testified as follows:

"I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had the two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all." (Printed Rec., 34.)

Valley Crabtree testified as follows:

"I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford, fellow employees, were with me. As we were going on Niedringhaus avenue near the depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around the depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few

seconds and the policemen came along and arrested us three employees, Mr. Ishman and another gentleman.

"I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there." (Printed Rec., 35.)

Thos. Cantrell testified as follows:

"I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock, and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys, but I can't identify them; they started hurling bricks at me; some hit me on the back and I made my get-away towards the plant. I stayed in the plant until about 8 o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots." (Printed Rec., 35.)

Adolphus Hileman testified as follows:

"I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd; Lamb and Ishman was with them. They asked me to stay out, that there was a strike on there; I told them I would go in and pour the heats and then come out, and a fellow said, 'Go on in and scab then and we will catch you when you come out.' On the evening of April 24 I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out.

Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Harry McKenny. I was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the company at all." (Printed Rec., 37.)

Arthur Gordon testified as follows:

"I am working as a craneman for the complainant; started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot, and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't know what I was knocked down with; it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore; couldn't hardly breathe at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it; they threw a pile of rocks; they didn't hit me, but hit the street car. I don't know any of the names of the men in the bunch.

"Before this I had been talked to by Ted Ishman; he stopped me and told me if I didn't quit going in there they would put me out of commission. I told them I was going to work

anyhow, and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank; after that on a cot." (Printed Rec., 38.)

Oscar E. Hall testified as follows:

"I am master mechanic at the plant of the complainant and have been since May the 1st, 1913. * * *

"About the 24th or 25th of April I had a conversation with the defendant Lamb. He said to me, 'We don't like the way you have treated our boys down here and we just come down to raise a little hell.' Just before he said this he was with a party of five or six men.

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want? A. I think not.

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none." * * * (Printed Rec., 39.)

Charles Fortner testified as follows:

"I am working in Alton, but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; on the evening of April 23, as I was going home, I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off, and didn't want to get into trouble one way or the other." (Printed Rec., 42.)

Fred Stark testified as follows:

"I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the effects at the present time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red-headed man back there in the courtroom I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back. I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock. After that night I slept in the plant on a pattern table." (Printed Rec., 42.)

Harry McKenny testified as follows:

"I live in Granite City and am a steamfitter and belong to one of these unions. * * *

"Yes, sir, I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away, and he said, 'You G—d d—n son of b——, I will work where I please,' and I hit him. We were standing at the south end of the depot; me, Churchill and some other fellow. I never tried to stop anybody from going into the plant by force. I never assaulted nobody. I talked to them; tried to talk to them in a good way." (Printed Rec., 51.)

VII.

Injunction As Decreed by District Court Should Stand.

When a conspiracy and a combination are entered upon to do an unlawful act, the presumption is, the methods employed for its accomplishment will be correspondingly unlawful. When, as in the case at bar, the methods for the accomplishment of unlawful combination and conspiracy are illegal and lawless (as proved by the evidence and judicially found by both the District Court and by the Circuit Court of Appeals), it is a fair presumption that similar unlawful and illegal methods will be continued, unless restrained, and will be resumed if the restraint should be released. The decree permanently enjoining such lawlessness and the further execution of an unlawful combination and conspiracy should not be left to particularity of language or fine distinction of expression, but should be general and as comprehensive as possible to make certain, the efficacy of injunction and restraint. Such was the decree as entered by the District Court in this case. (*Sailors Union* v. *Hammond Lumber Co., supra.*) The modification directed by the Circuit Court of Appeals, if its affirmance is conceivable, will be an invitation to the respondents to renew and continue their lawless methods for carrying out their unlawful conspiracy and combination, and when haled into court in proper proceedings for contempt, to seek exemption from punishment by casting doubt upon the proper interpretation of the

terms "lawful" and "picketing," and as said in *Barnes* v. *Typographical Union, supra,* "would leave such question to the individual notions or bias of the particular judge." Judge Humphrey, who decided the case, having died, petitioner would lose the benefit of the knowledge and information which came to that Judge in his judicial capacity and which naturally and properly would be considered in the deliberations on any contempt proceeding instituted to punish a violation of an injunction in the modified form as proposed by the Circuit Court of Appeals.

In the light of the evidence of brutality and lawlessness in this case, any modification, it seems to us, would be most unfortunate and most serious for both the petitioner and its employees. It would give an encouragement to interfering organizations having no relation to the employer, and, as in the case at bar, made up of barbers and barkeepers, and clerks and workmen in various trades not related in any way to the business or enterprise of the petitioner, wherever resident, in Illinois or out of Illinois, to interfere with the business, property and operations of the petitioner and of its employees.

If the practice and proceedings of the respondents in this case are sustained by affirmance of the decision of the Circuit Court of Appeals, then property and business are indeed insecure; both the employer and employee are in a position of helplessness and terrorism, and the vital interests of industry and of business and of capital and of labor as well, seriously menaced.

We respectfully submit that the decree of the Circuit Court of Appeals modifying the injunction of the District Court be reversed and the final decree of the District Court be affirmed.

Max Pam

Harry Boyd Hunt

Wm. E. Wheeler

Solicitors for Petitioner.

Max Pam,
Of Counsel.

APPENDIX.

Judge Humphrey's Opinion.

The law is very well settled, I think so well settled that there can be no dispute with the court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe, but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on a great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides, that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized, and that brings us near to the point of conflict. The manufacturer, the corporation, has work to do. It offers a price, the price which in its judgment the market would justify. The man or men who have the labor to sell try to meet that price.

They cannot do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E and F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right, but the very statement of that right contemplates that any other man, or any other body of men, organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "Yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills in the books. This bill charges a

combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests, viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no

other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law, and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted, and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be. We are all workers or we are no good. Every man must judge for himself as to the contract of labor which is satisfactory to him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the Government will protect such neighbor and a government that will not protect such a man isn't fit to live, and, in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the condition under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an

unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law, and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence, in the execution of the unlawful combination.

The injunction may go this much further; it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination, whether the knowledge came to them before or after the issuing of this injunction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the court will find some means of enforcing its order.

Circuit Court of Appeals Opinion.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any per-

son by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000, which it alleges the Tri-City Trades Council, a labor organization and other defendants, former employees of plaintiff or members of the Council were injuring and threatening to destroy. It alleges the Tri-City Trades Council attempted to force plain-

tiff to raise the wage paid its employees, and to accomplish its object called a strike of plaintiff's employees. In the course of the strike picketing was resorted to, and the defendants sought the support of non-striking and prospective employees. Plaintiff further claimed that its employees were assaulted by defendants and by those engaged in picketing the shops, and that prospective employees had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

> "Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23rd, 1914; that the said defendants on April 23rd and since that time have caused various numbers of men or pickets, to-wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employees of your orator unless said employees ceased from their work; that said defendants so combining did on April 29th, 1914, cause two of your orator's employees to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of any nature. On the other hand, they claimed that strike-breakers attempted to shoot the

striking employees, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit

> "that said Tri-City Central Trade Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

> "This evidence clearly shows that this union, this Trades Council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing, he said:

> "However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(a) The evidence does not justify the issuance of any injunction.

(b) The restraining order is too broad and restrains defendants from doing lawful acts.

(c) The court is without jurisdiction, because the amount involved does not exceed $3,000.

Evans, Circuit Judge, delivered the opinion of the court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the Federal court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the district court jurisdiction.

Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

But the court also enjoined the defendants:

> "from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued:

> "It is further ordered * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow employees to join them in their effort to secure what the strikers apparently considered the laborer's just demands.

In *Iron Molders' Union* 125, *Milwaukee*, v. *Allis-Chalmers Co.*, 166 Fed., 45, the rule is so well stated that we quote from it the following:

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets

> are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. *Prohibitions of persuasion and picketing, as such, should not be included in the decree.*"

Labbatt in his work on Master and Servant, Vol. 7, page 8364, says:

> "Attendance in the vicinity of the employer's place of business for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says:

> "The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the *Iron Molders Union* v. *Allis-Chalmers Co.* case, *supra*, are, *Gray* v. *Building Trades Council*, 91 Minn., 171; *Karges Furniture Co.* v. *A. W. Local Union*, 165 Ind., 421; *Everett* v. *Typo. Union*, 105 Va., 188; *In re Heffron*, 179 Mo. App., 639; *Jones* v. *Maher*, 116 N. Y. Supp., 1126; *Jones* v. *Van Winkle Gin & Mach. Works*, 131 Ga., 336; *Pope Motor Car Co.* v. *Keegan*, 150 Fed., 148.

But it is contended that the decree in these respects was proper because

(a) The restraining order does not prohibit picketing *per se*, but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(b) Defendants were not plaintiff's employees, but were mere outsiders, intermeddlers who were not truly representing the employees, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employees.

Plaintiff's contention that a court may restrain lawful acts of striking employees when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are *Sailor's Union* v. *Hammond Lumber Co.*, 156 Fed., 450; *In re Debs*, 158 U. S., 564; *Barnes* v. *Typo. Union*, 232 Ill., 424; *Karges* v. *Woodworkers Union, supra.*

If the record disclosed the existence of an unlawful conspiracy on the part of the defendants to injure or destroy plaintiff's property the court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act however innocent in itself,

directed to that end can be said to have a lawful purpose for its doing. Indeed, it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is unlawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employees the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this court has held, to ascertain whom the late employer:

> "has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the *Allis-Chalmers* case:

> "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective, may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business, in that it would make it more difficult for it to retain old employees and to hire and keep new ones. Indeed, the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within the rights although he obstructs the "free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's business. But whether the in-

terference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the *lawful* means of interfering with another's business as an incident to the party's own right and *unlawful* means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with, because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employees at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true, a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

> "A relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances, it cannot be said that the labor

organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

Insofar as the decree restrains *all* picketing and *all* persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the *Allis-Chalmers* case will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the District Court is reversed, with direction to modify the same, and to enter a decree, in accordance with the views herein expressed.

OCT 4 1920
JAMES D. MAHER,
CLERK

General No. 25809. Term No. [redacted]

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1917.

THE AMERICAN STEEL FOUNDRIES,
Petitioner,
vs.
THE TRI-CITY CENTRAL TRADES COUNCIL, *et al.*,
Respondents.

SUPPLEMENTARY BRIEF OF RESPONDENTS.

FRANK C. SMITH,
Solicitor for Respondents.

Press-Record Publishing Co.

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1917.

THE AMERICAN STEEL FOUNDRIES,

Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benjamin Lamb, J. P. McDonnough and C. E. Gerlick,

Respondents.

SUPPLEMENTARY BRIEF OF RESPONDENTS.

TO THE HONORABLE SUPREME COURT:

When this cause stood for oral argument in said court on January 12, 1919, counsel for petitioner filed

an answer to respondent's brief in which complaint was made because the testimony of one Welcher had, in a few instances, been misquoted. In looking into the matter we find his statement, viz: "We had only called for, in round numbers, 300 of approximately 1300 men laid off; 80 or 90 per cent of the old employes were old men. I assume these were members of various organizations." (Ab., p. 51). While in substance there may be no difference the statement was nevertheless erroneously quoted. The mistake was in making use of the quotation marks. On pages 72 and 85, however, Welcher was quoted word for word. In his testimony (Ab., p. 31) he had told of the Tri-City Central Trades Council having sent a committee to wait on him and on page 32 spoke of an open shop, does not recognize organized labor. Hence the local unions affiliated with the Tri-City Central Trades Council is what he referred to. It could not have possibly been any other organization. The only way to account for the oversight mentioned is the short period of time allowed in which to prepare the brief and have it printed. We might add that when this cause was pending in the United States Circuit Court of Appeals on rehearing, Welcher was correctly quoted on page 13 of Appellants' Answer. And again when pending in this court on certiorari he is quoted word for word on page 8 in the brief of respondents.

In view of the fact that a re-argument has been ordered in this proceeding we have felt obligated to file this, our supplemental brief. This injunction suit was filed in the District Court at Springfield, Illinois, May 18, 1914. The acts complained of took place on April 6, 1914, and prior thereto. A temporary restraining order was issued. On June 14 the defendants filed their answer. A hearing was had on June 8, 1914, and the injunction made permanent. From the final decree the defendants appealed. The case was argued orally twice in the United States Circuit Court of Appeals. After judgment in favor of the defendants, the complainant filed a petition for rehearing which was denied. The cause then came to this court on certiorari. On January 17, 1919, it was argued orally. The case is now before the Court for reargument.

While this case was pending in the United States Circuit Court of Appeals, Congress enacted what is known as the Clayton Act. We alluded to the enactment of this law on page 27 of the brief filed in the United States Circuit Court of Appeals. The opinion rendered in said court while favorable to defendants made no reference to such act. In the brief filed in this court on pages 46 and 115, reference was likewise made to such act.

The primary questions involved in this case is the right of workingmen to combine and the right to do peaceful picketing and as these two questions are mentioned in said law we concluded to go into that phase of the case more at length.

The Clayton Act, Enacted By Congress, Aug. 31, 1916.

The parts of the law which we believe will govern in this cause are:

Section 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

"Section 20. That no restraining order, etc. And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or

from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful and lawful means so to do, or from paying or giving to or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be a violation of any law of the United States."

As to whether or not a statute is to take effect immediately or at a certain specified time, the intention of the act itself must determine. At the conclusion of the act we find:

Section 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the Court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of or in behalf of the United States, but the same, and in all other cases of contempt not specifically embraced within Section 21 of the act, may be punished in conformity to the usages at law and in equity now prevailing.

Section 25. That no proceeding for contempt shall be instituted against any person unless begun within

the object intended to be accomplished. (P. 1110.)

Vol. 25 of Cyc.

When the statute declares generally that no action, or no action of a certain class, shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would naturally make it to apply to past actions as well as to those arising in the future. (P. 994.)

Except in cases of direct technical trusts, the statute of limitation operates as a bar, in equity as well as in law. (P. 997.)

In Volume 12, Am. & E. of Law, page 527, we find: "The enactment of expost facto laws either by Congress or the Legislature of a state is expressly prohibited by the Federal Constitution" and in defining what an Expost facto law is on page 525, says:

"An Expost facto law is one which in its operation makes that criminal or penal which was not so at the time the action was performed." And in Vol. 24, page 577 we find:

"An Act retroactive in effect where there are no vested rights involved is not contrary to the principles of jurisprudence." We contend that in the case at bar there are no vested rights. As to whether or not an injunction should have been granted in this case is a matter of doubt. To remove that doubt

Congress enacted the Clayton Act. In Vol. 26, Am. & Eng. Enc. of Law, page 529, we find:

"A declaratory statute is one which is passed in order to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been."

In the case of City of Cairo v. Cairo & V. R. R., a controversy arose over the use of the streets. An ordinance having been passed granting the railroad certain rights and privileges, the railroad claimed that the city could not by a subsequent ordinance restrict it in the use of such streets but the Court said the city could do so.

In the case of Sturgis v. Carter, 114 U. S. 511, it would seem the State of Ohio made a change in its tax laws. The County Recorder in order to determine whether or not a certain party had paid the rightful amount of taxes sought to go back a period of four years. The contention was that the act was retroactory and contrary to the constitution. The Court, however, held the County Recorder could do just what he was doing.

In the case of Wrightman v. Boone County, 88 Fed. 435, the question arose as to whether or not the act should or should not have a retroactive effect. The Court in passing on the question said: "The intention of the Legislature in enacting a limitation law should apply and in this case an examination of the

law in question has left no doubt in our minds that the Legislature of Arkansas intended that this act should affect judgments rendered before as well as those rendered after its passage."

We feel that inasmuch as Congress enacted the law in question to settle the questions involved, the law was retroactive to the extent of applying to an injunction proceeding pending at the time. That being so Complainant is without standing in this court.

Clayton Act would supersede and Common Law Holding that a labor union is an unlawful combination.

At common law under a decision in 1721, labor unions in England were held to be criminal conspiracies. An Act of Parliament in 1824, legalized labor unions. Even after this some English courts continued to outlaw them as combinations in restraint of trade, but legislative enactment in 1876 has made labor free (24 Cyc., pp. 818-19). Legislatures as well as courts now recognize the right of laboring people to organize for the purposes of promoting their common welfare, elevating their standard of skill, advancing and maintaining their wages, fixing the hours and rates of wages (24 Cyc., p. 819). In this country some courts have held a labor union to be an unlawful combination. In some instances held to be unlawful on the theory that they are in restraint of trade. Congress having been importuned by labor to give labor unions relief from this source, did on

August 31, 1916, enact what is known as the Clayton Act, Section 6 of which reads as follows:

"That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." The Tri-City Central Trades Council comes within the perview and protection of this statute. Excerpts from the by-laws, introduced in evidence by the Mill Company, on page 60 of the Record, show the council to be organized for mutual help. As stated by Galloway, the president, "One of the purposes of the organization was for their mutual protection, education and social advancement" (Ab., p. 46). The Council was not a stock concern and the only money it had was $87.00 (Ab., p. 46). Nor was it a profit-sharing concern. One of the objects is, however, "To assist each other in securing fair remuneration for labor and forcing recognition of our rights as free citizens, to join and participate in any organization not in violation of the fundamental laws of the land (Ab., p. 61). Had there been anything in the by-laws which tended towards a violation of the laws counsel for complainant would have cited it.

While this injunction suit was filed on May 18, 1914, and the Clayton Act was not passed by Congress until May 31, 1916, and this case was pending in the U. S. Circuit Court of Appeals, the law nevertheless affects this proceeding. To say that the law does not apply would be to contradict Judge Humphrey, the trial Judge, who, in the opinion rendered among other things said:

"This bill is brought upon a different theory from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful. This evidence clearly shows that this union, the trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon condition that it pay a certain scale, the November scale. That combination is illegal. They hadn't any right to do it." (Ab., p. 63).

"The proof here sustains the averments of the bill, as to the illegal combination. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful." (Ab., p. 64).

We believe, therefore, that Section 6 of the Clayton Act with reference to combinations should be applied in the case at bar.

Judge Humphrey predicated his holding on the theory that the Tri-City Central Trades Council was an unlawful combination or conspiracy. It being unlawful anything done in furtherance of it was unlawful.

On page 63 of the transcript of the record, the trial Judge used these words:

"This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful."

On page 64, he used this language:

"The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful."

In 1886 Congress enacted a law whereby workingmen might organize themselves into unions: To promote their general welfare, the elevation of their members, the regulation of their wages and their hours and conditions of labor." (Vol. 24, U. S. St., p. 86).

The Clayton Act (referred to in Brief on page 4), says:

Section 6 of the Act after mentioning labor, horticultural, agricultural and labor organizations, says:

"Nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies under the anti-trust laws."

We have had our doubts as to whether or not the Clayton Act would apply. Section 25 of the Act would indicate that it did, because it provides, "Nothing herein contained shall affect any proceedings of contempt pending at the time of the passage of this act."

The proceedings now before the Court is not a "contempt" proceeding and since "Contempt" proceedings pending were not to be affected it would seem that the ordinary injunction would be. Hence Section 6 of the Act with reference to conspiracies will, we believe, apply to the issues involved in this case.

In Cyc., Vol. 8, page 620, we find this about conspiracy:

"It has been said that there is perhaps no crime, an exact definition of which it is more difficult to give than the offense of conspiracy.

The essentials of a conspiracy, whether viewed with regard to its importance in a criminal prosecution or its significance in civil action for damages, are commonly described in this general language: It is a combination between two or more persons to do a criminal or an unlawful act, or a lawful act by criminal or unlawful means."

Page 637. In the earlier English decisions it was held that while persons may each singly refuse to work unless they receive an advance in wages, yet if they do so by preconcert or association they may be punished as for a conspiracy (English cases cited). The more recent English decisions, influenced no doubt by legislation on the subject, hold that workmen have this right:

Justice Carter in the Kamp case 241-255 Ill. 213, p. 405, says:

"In the last half century the changes in machinery and in social conditions generally have not only greatly affected economic theories, but have required many changes in the law so as to conform to altered social needs. New statutes have been enacted, but, independent of any statute, the courts have gradually adapted the fundamental principles of the law to changing conditions. * * *

"Less than two centuries ago it was held by the English courts to be a criminal conspiracy at common law for two or more persons to combine for the purpose of obtaining higher wages." (P. 398.)

In the 18 Vol. Am. & Eng. Enc. of Law on page 82, we find:

"The advantages which accrue from organization and substitution of concerted action for individual effort are too obvious to require discussion. Com-

bination means power and power in this connection implies the ability to command or control. To gain control over the will of their employer, the ability to dictate the terms and conditions of their employment is the purpose of all combination of laborers. In the Rutherford case, 106 Mass. 1-14, the Court in passing on a like question, said: 'Of what benefit would it be for workingmen to organize if such organization is to be held unlawful. It is idle and vain to give a man a right unless you also give him the power to enforce that right.' "

In the case at bar the testimony of the superintendent alone shows the necessity of organization.

In the Hitchman case (Hitchman, etc., v. John Mitchell *et al.*, decided December 10, 1917), while counsel for appellant would try and make believe that it would govern the issues involved in the case at bar, a perusal of the opinion shows that it will not. In that case the employes had entered into a contract not to become members of the miners' union and it was upon that point the decision finally rested. In this case no witness testified that a contract of any kind was involved. Nor was the question of unionizing the mill involved. All the Tri-City Central Trades Council, through its officers, tried to do, was to carry out the wishes of those employed therein. Those in the employ of the mill and who were members of the different 37 locals comprising the parent body, requested such aid. And while endeavoring to aid them they were indirectly aiding those who were not affiliated with such locals. Because any benefit accruing

to one would go to the other. There are some men who like to have the benefits of organized labor, but do not wish to contribute their portion to its maintenance. Like the citizen who is willing and anxious to receive all the benefits his country may confer upon him but refuses to make any sacrifice in her behalf.

After the U. S. Circuit Court of Appeals decided the Hitchman case, the opinion rendered would indicate that it might apply in this case and it was referred to in Respondent's Brief on petition for certiorari (page 23). Counsel for Petitioner, in Reply Brief for Respondents, on page 7 said:

"Respondents also cite Mitchell v. Hitchman,, Co., 214 Fed. Rep. 686. The Court will find in the opinion at page 690 that the purpose of the injunction was to restrain a labor organization (United Mine Workers of America) from seeking membership among the employes of the Coal Company. The questions presented in the case at bar were in no way involved in that case, and the principle point decided was that the labor organization was not in itself unlawful and should not be enjoined from peaceably seeking to augment its membership from amongst the employes of the coal company." Counsel for Appellant was of the opinion then that the Hitchman case would not govern. We quite agree with him.

Tri-City Central Trades Council represented the Mill Employes.

It is our contention that the Tri-City Central Trades

Council acted as the agent or representative of the employes of the mill.

Galloway (Ab., p. 43) testified: "As president of the Central Trades I first learned of a controversy between wage earners and the foundries from the delegates of the various trades who were refused any wages at that plant and made complaint of the central body that their wages had been reduced from two to nine cents an hour.

After the council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the central body and asked for its co-operation in the matter of arbitration with the foundries. A committee was appointed by the Central body to wait upon this corporation to arbitrate the question (Ab., p. 44).

As chairman, I went into see Mr. Welcher and stated the case to him (Ab., p. 44).

This was about the 20th or 21st of April. It was reported back to the joint board and a strike was declared on the plant. A committee of the joint board of the Tri-City Central Trades Council selected these pickets, rather they were from the different crafts that were connected with the reduction of wages. The joint board placed pickets down there

at the Wabash depot along the streets leading to the plant and we sanctioned their action" (Ab., p. 45).

Cavanaugh, Secretary of the Tri-City Central Trades Council, testified at the regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday, the 19th. Ten or eleven trades were represented and we decided to call on the American Steel Foundries and see if we could not have the wages reinstated or arbitrate the matter (Ab., p. 57). I wasn't present at the arbitration planned meeting which was on the 20th of April. At the meeting Wednesday evening the committee reported they failed to reach an agreement and the management said they had nothing to arbitrate (Ab., p. 57).

Cross-Examination.

"On April 15, we had a communication from the unions representing some of the trades working in the foundries. We had complaints from the men themselves working at the foundry." (Ab., p. 58).

Hartbeck, member of the Blacksmiths' Union, testified:

"I have been at meetings of the Central Trades

Council and heard it reported about trouble between the complainant and the employes." (Ab., p. 50).

Welcher, the superintendent, stated that "Only two men left our employ in response to the strike order" (Ab., p. 41). And yet he testified, "We ran our plant without any trouble with our men until the morning of the 23rd of April" (Ab., p. 41). "It was impossible to keep ourselves properly employed with the right class of labor to operate the plant" (Ab., p. 410). "Prior to the calling of the strike we had no trouble in securing labor at the plant" (Ab., p. 23). "We have been compelled to employ men to operate various machines who were not as efficient as men we had there prior to April 22" (Ab., p. 25). "We had no trouble with our class of men from April 6th to April 22nd" (Ab., p. 25).

Lamb, Business Agent for the Machinists testified: "Prior to the strike some of the men in my organization were employed at the plant. We called them out after the strike was declared" (Ab. p. 48).

Cross-examination: On the 22nd or 23rd of April, I think five of our machinists were in the plant. One by name of Missel who quit of his own volition and Tom Churchill and Hamp and Drogg. Drogg was what we called a semi-machinist (Ab., p. 48).

Hartbeck, Business Agent Blacksmiths' Union (Ab., p. 50), testified: "When the reduction of wages took effect I was ordered by my superior of our district

board to go over there and to have men over there that would go to work to try and have them come out if they could under reduction of wages. Probably some of our men would go in unbeknowing to the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for" (Ab., p. 51).

Cook testified (Ab., p. 56): "I am an electrician and belong to none of the unions. Worked at the plant about three weeks after it started up. I quit because they cut my wages" (Ab., p. 56). Floyd said "I was going to get 26 cents an hour and when pay day came I got 23. Worked four or five days longer and quit because they said there was a strike on" (Ab., p. 56).

Holmes (Ab., p. 55): "I am an electrician. I worked there when the plant closed in November, didn't go back to work in April on account of the reduction" (Ab., p. 55).

Churchill (Ab., p. 52): "I am a machinist. Was working for the plant when it closed down in November and went back to work when they opened, but got an increase over the new men they had, but still it was a reduction (Ab., p. 52). I quit because these fellows asked me to go out" (Ab., p. 53).

Welcher testified (Ab., p. 41): "We only had called for in round numbers, 300 men, and laid off approximately 1300 men; 80 or 90 per cent of the employes

were old men. I assume these men were members of various organizations; I can't state definitely as to that" (Ab., p. 41).

Fortner (One of Complainant's witnesses; Ab., p. 42), testified: "I worked at the foundry before they closed down in November, running a crane. They resumed work on April 6 and reduced my wages. I worked there from April 6th to April 27th. Went in and out of plant every day and was not molested. It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better quit (Ab., p. 42). I don't belong to one of those labor unions. I did belong to the cranemen's local, but I wasn't working for a couple of months before this trouble and I didn't pay my dues" (Ab., p. 42).

Floyd: "The workmen affected by this picketing are the machinists, craneman and skilled labor. The rest of the plant cannot operate without the cranemen and these skilled laborers" (Ab., p. 43).

While Welcher's testimony showed that 80 or 90 per cent of the 300 men who had resumed work were members of the various locals affiliated with the Tri-City Central Trades Council, our contention is that none of the remaining 1300 had severed their connection with the company. These could have returned but did not do so because of the reduction of wages.

To say that the Tri-City Central Trades Council has no right to intercede in behalf of the employes

of the Mill Company is absurd. The principle of "collective bargaining" is now well established throughout the land and it is the only effective means whereby workingmen may secure concessions through lawful methods. Just how many employes connected with the various locals affiliated with the Tri-City Central Trades Council, were working there at the time, or before, we cannot say, but the testimony of the witnesses would indicate quite a number. Welcher, the superintendent, is probably correct when he said: "We only called in round numbers 300 men and laid off approximately 1300 men; 80 or 90 per cent of the employes were old men. I assume these men were members of various organizations" (Ab., p. 41). Surely he had no other organization in mind other than the labor organizations affiliated with the Tri-City Central Trades Council. His statement supports that of Galloway, president, and Cavanaugh, secretary, officers of the Central Trades Council, who testified that the employes of the Mill Company had suggested to the Tri-City Central Trades Council that it take up the matter (Ab., pp. 43, 57).

It is just as reasonable that the Tri-City Central Trades Council represent the workers employed, or who had been employed, at the mill as it is for counsel to appear representing the Mill Company. If each employe would have to make the individual claim and contest why not each stockholder of the Mill Company make a separate defense or contest. Instead of doing this the stockholders combine and choose officers to represent them. Counsel for the Mill Company

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represents the stockholders because the officers of the combination retained him to do so. Counsel for the Respondents represents the workers in such mill because the officers of the Tri-City Central Trades Counsel retained him to do so. If stockholders may combine, and we are not saying they should not—why not grant workingmen a like privilege?

The whole trouble in this case arose because of the refusal of the Company to deal with the committee chosen. When the committee called at the plant for an interview—at that time having in mind arbitration—Mr. Welcher, the superintendent, said: "Would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals" (Ab., p. 44). Every man of experience knows that when the employes of any concern seek to go it alone, as individuals, they never get anywhere. Without an organization they are an impotent force. Imagine the employes appointing a committee to call on the manager because of a grievance about pay or hours. Before the committee could secure an audience they would have been discharged. Having been dismissed from the service they would not be "our employes." This saying, "Merely deal with our employes," is the method adopted by the employer who does not think an employe has any rights or privileges that he should observe. It has been demonstrated that officers of an organization—none of whom are employed in the particular plant—are in a better position to represent the workers because they have nothing to fear.

When the officers and committee of the Tri-City Central Trades Council met in conference with representatives of the Commercial Club the claim was not made that the committee did not represent the employes in the mill. Nor does it appear that up to that time there had been any violence. It was at that time Galloway spoke to Mr. Davis (the general manager) about one of the strikebreakers trying to shoot one of their men and Mr. Davis replied: "The only trouble with the man that done the shooting was that he didn't shoot straight enough" (Ab., p. 56).

At a time when the law abiding workingmen of the country connected with the American Federation of Labor, as is the Tri-City Central Trades Council, are striving their utmost to maintain the principle of collective bargaining and at the same time combatting the evil tendencies of the Bolsheviki-Soviet system which the I. W. W. and other lawless organizations are fostering, it illy becomes a great concern like this mill company to indirectly aid them. Should this court decide the issues involved as Complainant's counsel would have them decided, then every labor union affiliated with the Central Trades Council—as well as the Tri-City Central Trades Council itself—and every organization affiliated with the American Federation of Labor would be declared outlaws. Likewise, the sixteen railroad brotherhoods would come under the lawless ban. No greater calamity could befall the employer class in this country. It is not necessary to recite what has taken place in Russia. Everybody knows. Only recently in Italy a contro-

versy arose over working conditions and the employers closed the mills. The employes took charge of the mills and plants. When the authorities sought to dispossess them through the military power they found the military allied with the workers.

As long as the American employer recognizes the principle of "collective bargaining"—the cardinal principle of the American Federation of Labor—working men in America will decry the Russian Bolsheviki, Soviet, I. W. W. theories. But should this feature be abandoned and labor unions made outlaws then no man may predict what the future may bring forth.

Employer has no property right in his employe.

When this case was tried in the U. S. District Court we contended that the Complainant had no property right in its employes and therefore should not be permitted to maintain its said cause and that it was only upon the theory of such property right the injunction prayed for against the defendants might be awarded. On appeal to the U. S. Circuit Court of Appeals, page 13 of our brief it shows that we made the same contention. We believe that the case of Northern Pacific R. R. v. Whalen, 149 U. S. 157-62, is controlling on that point. In that case it appears the railroad company was constructing an extension and had numerous laborers in its employ. A party by the name of Whalen opened a saloon and as a result the workingmen patronized his place, became intoxicated and they were rendered unable to perform the service required

of them and the progress of the work was interfered with. The railroad sought an injunction to restrain Whalen from thus conducting his saloon at the place mentioned. But the U. S. Supreme Court in deciding the case held that no employer had such a right of property in his workingmen to warrant the issuing of an injunction under the circumstances. In the case at bar the testimony of Complainant's witnesses shows that if any assaults were committed, they were committed beyond the Wabash depot and tracks. And, according to the testimony of the superintendent, Welcher, the Wabash depot is 150 yards from the plant (Ab., p. 29). The four officials of the company who testified, testified they saw no assaults committed.

Hedstrum declared he had been assaulted at the Wabash station (Ab., p. 27); Crawford assaulted beyond the Wabash depot (Ab., p. 28); Quinn was beyond the depot when assaulted (Ab., p. 29); Melton, in lunch room across the track when they threatened me (Ab., p. 30); Francis saw an assault committed near the depot (Ab., p. 31); Bell was struck while up near the stamping works (Ab., p. 32); Floyd saw basket taken from the negro over at the Wabash station (Ab., p. 34); Crabtree was struck by someone with fist on Niedringhaus avenue near the Wabash depot (Ab., p. 35); Cantrell assaulted square from Wabash depot (Ab., p. 35); Knott, at Wabash depot was threatened with a knife (Ab., p. 37); Hillman was six blocks from plant when threatened (Ab., p. 37); Gordon was kicked at the Wabash depot (Ab., p. 38); Stark was

struck with a rock after passing Wabash depot going to the street car (Ab., p. 42).

It is obvious no public right was involved in this case. The public had no interest in the plant. The management could open and close it at will. They could dismantle it if they saw fit. The employes had no interest in the plant other than in it they might secure employment. The operation of a railroad is different for a railroad serves the public and in a measure is controlled by the state. For an employer to seek an injunction against certain ones to restrain them from assaulting its employes 300 feet or more from its plant, it must be upon one theory alone, and that is the right of property in such workingmen. If there was doubt in regard to our position in this matter that doubt was removed when Congress enacted the Clayton Act for Section 6 of such Act provides: "That the labor of a human being is not a commodity or article of commerce." This law having been passed while the case was pending on appeal should govern. Had Congress intended to exempt any injunction proceeding pending it would have said so. Section 24 of the Act does exempt any "Contempt" proceeding pending. But this is not a contempt case. "Judicial notice" would require the Court to take cognizance of the passage of such act.

In the case of Moog v. Randolph, 77 Ala. 597, it was held that "Judicial Notice" would empower the courts to take judicial notice of the journals of the two houses of the General Assembly and search them

for the purpose of ascertaining whether a particular statute, included in the printed volume, published by authority, was enacted in manner and form as provided for by the constitution. On page 27 of Appellant's Brief in the U. S. Circuit Court of Appeals the Clayton Act was alluded to. The Court, however, did not refer to the Act, but did nevertheless decide the issues involved in our favor.

If the Federal Courts seek to control assaults—when no public right is involved—and interfere when one man assaults another they will find much to do. It will be like unto the case of the People v. Dunne, 219 Ill. 346. In that case the Court was asked to mandamus the Mayor of Chicago and require him to observe his oath of office and enforce the city ordinances and the statute of the State of Illinois with reference to closing the saloons on Sundays. The Court considered the matter at length, agreed that the granting of such writ was within their right, but considering the fact there were thousands of saloons in said city the task of governing them was too much for the courts to assume. Rather leave it to the officials chosen for that purpose, even though they failed in the discharge of the duty imposed upon them. And in the case at bar there was a mayor and police department in Granite City, numerous constables, a sheriff with numerous deputies and a governor empowered to call out the militia. There are justices of the peace in Granite City before whom complaints might be filed, a City Court, County Court and a Circuit Court. The laws of the state are ample to pro-

tect any man in his rights and for the prosecution of a wrongdoer. To bring a controversy such as this into the Federal Court seems unwarranted.

Clayton Act and Peaceful Picketing.

In many courts of our land peaceful picketing is recognized as a right and privilege, and workingmen have been upheld in making use of this force to compel the employer or employers to make concessions to the employes. But the District Judge who heard the evidence and approved the final decree held otherwise. To make sure that he might not be misunderstood he rendered an opinion and therein we find the following: "However, speaking upon this question (He had been speaking of an illegal combination), I should say a word about picketing. There is no such thing as peaceful picketing" (Ab., p. 64).

While this case was pending on appeal to the U. S. Circuit Court of Appeals, Congress enacted what is known as the Clayton Act. Section 20 of which reads as follows:

"That no restraining order * * * and no such restraining order, or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons, may lawfully be, for the

purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or abstain from working * * *"

As to whether or not the U. S. Circuit Court of Appeals considered this Act in arriving at its decision we do not know. On page 27 of Appellant's Brief filed in said court, the attention of the said Court was called to the enactment of such law. When the opinion was handed down, while favorable to appellants, the Clayton Act was not alluded to. A perusal of the Act in its entirety would seem to indicate that the law was intended to affect any injunction proceeding then pending.

While the trial Judge held there was no such thing as peaceful picketing, the evidence is there was in this case. The four officials of the company dispute the Judge on this point.

Welcher, the superintendent, testified: "I saw none of the men assaulted. The pickets did not come with inside the fence to my knowledge. At times they were within 20 feet of the plant. They were trying to prevail upon the men from entering the plant (Ab., p. 31). I saw no assaults committed; I saw no disturbance" (Ab., p. 31).

Floyd, employment agent: "My office is located so I can look across the railroad track (Ab., p. 42). I am in my office from 7 to 12 in the morning and from 6:30, 7:30, 8, 9 or 10 o'clock at night. I did not see

any of the particular attacks mentioned. All I saw was the pickets talking to the men and the men being stopped" (Ab., p. 43).

Hoffman, the foreman: "One hundred feet is the nearest I ever saw the pickets to the plant. All I saw them do was talk to the men. I saw no assaults (Ab., p. 45). I worked there every night and only saw the men stopped" (Ab., p. 45).

Hall, master mechanic: "When Lamb told me he did not like the way we were treating the boys he had reduction of the wages in mind. This reduction was the cause of the strike. I never saw any acts of violence or any of the assaults (Ab., p. 50). I only saw them stop the men and try to induce them to quit work and in this particular Freddy matter to make threats of violence (Ab., p. 50). The threat against Freddy took place as he was getting off the street car by some parties he did not know" (Ab., p. 49).

According to the testimony of Welcher the Wabash track and depot is 150 yards from the plant (Ab., p. 29). It is obvious that if assaults were committed, which our witnesses do not concede, such assaults took place beyond that point. The evidence is conclusive that there was peaceful picketing between the Wabash depot and the plant. On this point the District Judge who said there was no such thing as peaceful picketing is disputed by witnesses of the company itself.

Under the decisions of the courts heretofore cited, this court, we believe should, in its holding, sustain the U. S. Circuit Court of Appeals. The Clayton Act, if held to apply in this case, and we believe it does, is conclusive. We have never contended for any kind of picketing other than peaceful picketing. When a like case was decided in the U. S. Circuit Court of Appeals, Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45 (1908), the Court among other things said:

> "On the other side of this limiting line, appellants, we think, had the right, for the purpose of maintaining or increasing the incorporeal value of their capacity to labor, to an equally free access to the labor market. The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. For another thing that must not be forgotten is that a strike is one manifestation of the competition, the struggle for survival or place, that is inevitable in individualistic society. Dividends and wages must both come from the joint product of capital and labor. And in the struggle wherein each is seeking to hold or enlarge his ground, we believe it is fundamental that one and the same set of rules should govern the action of both contestants." (P. 50.)

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under

the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished." (P. 51.)

"A strike is cessation of work by employes in an effort to get for the employes more desirable terms. A lockout is a cessation of the furnishing of work to employes in an effort to get for the employer more desirable terms. Neither strike nor lockout completely terminates, when this is its purpose, the relationship between the parties. The employes who remain to take part in the strike or weather the lockout do so that they may be ready to go to work again on terms to which they shall agree—the employer remaining ready to take them back on terms to which he shall agree. Manifestly, then, pending a strike or a lockout, and as to those who have not finally and in good faith abandoned it, a relationship exists between employer and employe that is neither that of the general relation of employer and employe, nor again that of employer looking among strangers for employes, or employes seeking from strangers employment." (P. 52.)

In the Beaton Case, 102 Ill. App., the Court, on page 126 says:

"The right of workingmen to organize and combine for their own protection is no longer an open question. They may individually or collectively quit work of an employer and use all peaceable means to induce other workmen to quit even though the works of the employer be closed and loss ensue."

In the Kemp case, 241 Ill. 213 (Again before the Court in 255 Ill.), the Court said:

> "The purpose of organizing labor unions is to enable employes, who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union."

In the Elliott Case, 62 Fed. 801, the Court on page 817, said:

> "It may be conceded that employes of the receiver had a right to organize into, or join a labor union, which would take joint action as to terms of employment. If they stand together they are often, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities of a single employe may compel him to accept any terms offered."

The questions involved in this proceeding are of vital importance and under the common law, as well as under the Clayton Act, we believe should be decided adversely to the claim of Petitioner.

Respectfully submitted,

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